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EDITOR'S NOTE

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gust 14, 1985

Title: Richard E. Lyng, Secretary of Agriculture, Appellant
v.
Natividad Castillo, et al.

Court: United States District Court for the Southern District of Texas

Counsel for appellant: Solicitor General

Counsel for appellee: Martinez,Maria Norma

try	Date	Note	Proceedings and Orders
1	Jul 5 1985		Application for extension of time to docket appeal and order granting same until August 15, 1985 (White, July 8, 1985).
2	Aug 14 1985	G	Statement as to jurisdiction filed.
3	Jul 27 1985		Record filed.
5	Sep 11 1985		Order extending time to file response to jurisdictional statement until October 23, 1985.
7	Sep 18 1985		Order extending time to file response to jurisdictional statement until October 23, 1985.
8	Oct 23 1985		Motion of appellees Natividad Castillo, et al. to dismiss or affirm filed.
9	Oct 30 1985		DISTRIBUTED. November 15, 1985
0	Nov 13 1985	X	Reply brief of appellant Block, Sec. of Agriculture filed.
1	Nov 18 1985		PROBABLE JURISDICTION NOTED.
			**********
2	Jan 2 1986		Joint appendix filed.
3	Jan 2 1986		Brief of appellant Block, Sec. of Agriculture filed.
5	Jan 28 1986		Order extending time to file brief of appellee on the merits until February 10, 1986.
6	Feb 10 1986		Brief amicus curiae of Food Research and Action Center, et al. filed.
7	Feb 12 1986		Brief of appellees Natividad Castillo, et al. filed.
8	Mar 14 1986		SET FOR ARGUMENT, Tuesday, April 29, 1986. (4th case)
9	Mar 14 1986		CIRCULATED.
0	Apr 3 1986	G	Motion of the Solicitor General to permit Jeffrey P. Minear, Esquire, to present oral argument pro hac vice filed.
1	Apr 7 1986		Motion of the Solicitor General to permit Jeffrey P. Minear, Esquire, to present oral argument pro hac vice GRANTED.
2	Apr 29 1986		ARGUED.

JURISDICTIONAL

STATEMENT

85-250

No.

Supreme Court, U.S.
FILED
AUG 14 1985
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1985

JOHN R. BLOCK, SECRETARY OF AGRICULTURE,
APPELLANT

v.

NATIVIDAD CASTILLO, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Whether Section 3(i) of the Food Stamp Act of 1964, 7 U.S.C. 2012(i), which provides that parents and children, or siblings, who live together shall generally constitute a single "household" for food stamp entitlement purposes, violates equal protection principles of the Fifth Amendment's Due Process Clause by discriminating against family members or impermissibly burdening family decisions to live together.

PARTIES TO THE PROCEEDING

Appellant John R. Block, Secretary of Agriculture, was named as a defendant in each of four consolidated cases before the district court.

The plaintiffs in Civil Action No. B-81-260, in addition to Natividad Castillo, were Fernando Sosa; Petra Sosa, for herself and as next friend of Roberto Sosa, Saul Sosa, Roy Sosa, and Eduardo Sosa; Catalina Castillo; Natividad Castillo and Graciela Castillo, Minors; Blanca Martinez, for herself and as next friend of Venessa Marie Martinez, Minor; Sara Cortez, for herself and as next friend of Perla Ruby Cortez and Sylvia Cortez, Minors. The non-federal defendants were Marlin Johnston, in his capacity as the Director of the Department of Human Resources; and Jose Campos, in his capacity as the Program Director for the Brownsville Food Stamp Office of the Department of Human Resources.

The plaintiffs in Civil Action No. B-82-21 were Robert Cody, Jerry Cody, for themselves and as next friend of Gary Cody and Robin Cody. The non-federal defendants were Marlin Johnston, in his capacity as the Director of the Department of Human Resources; and Rene Zamora, in his capacity as the Program Director of the Harlingen Food Stamp Office of the Department of Human Resources.

The plaintiff in Civil Action No. B-82-7 was Sylvia Nieto, for herself and as next friend of Rolando Nieto, Minor. The non-federal defendants were Marlin Johnston, in his capacity as the Director of the Department of Human Resources; and Cruz Cervantes, in his capacity as the Supervisor for the Raymondville Food Stamp Office of the Department of Human Resources.

The plaintiff in Civil Action No. B-83-106 was Cecilia Villafranca, for herself and as next friend of Alberto Trevino and Eric Villafranca, Minors. The non-federal defendants were Marlin Johnston, in his capacity as the Director of the Department of Human Resources; and Jose Campos, in his capacity as the Program Director for the Brownsville Food Stamp Office of the Department of Human Resources.

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In the Supreme Court of the United States

OCTOBER TERM, 1985

No.

JOHN R. BLOCK, SECRETARY OF AGRICULTURE,
APPELLANT

v.

NATIVIDAD CASTILLO, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The memorandum and order of the district court (App., *infra*, 1a-8a) is unreported. The supplemental memorandum of the district court (App., *infra*, 9a-13a) is also unreported.

JURISDICTION

The order of the district court was entered on April 23, 1985. A notice of appeal was filed on May 17, 1985 (App., *infra*, 14a). On July 8, 1985, Justice White extended the time within which to docket this appeal to and including August 15, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1252.

STATUTORY PROVISION INVOLVED

Section 3(i) of the Food Stamp Act of 1964, 7 U.S.C. 2012(i), provides in pertinent part:

> "Household" means (1) an individual who lives alone or who, while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others, or (2) a group of individuals who live together and customarily purchase food and prepare meals together for home consumption; except that parents and children, or siblings, who live together shall be treated as a group of individuals who customarily purchase and prepare meals together for home consumption even if they do not do so, unless one of the parents, or siblings, is an elderly or disabled member * * *.

STATEMENT

The Food Stamp Act of 1964, 7 U.S.C. (& Supp. I) 2011 *et seq.*, establishes a public welfare program, funded by the Department of Agriculture and administered by state agencies, that supplements the food purchasing power of low-income households. This appeal involves four consolidated suits, brought by a number of potential benefit recipients against the Secretary of Agriculture (the Secretary) and state welfare administrators, challenging the constitutionality of Section 3(i) of the Act, 7 U.S.C. 2012(i), which defines the term "household" for food stamp entitlement purposes. The United States District Court for the Southern District of Texas held that Section 2012(i) is unconstitutional and enjoined its enforcement against the plaintiffs. The court reasoned that the statute violates equal protection principles of the Due Process Clause of the Fifth Amendment by creating a classification that discriminates against family members and that impermissibly burdens family decisions to live together. The Secretary seeks direct review, pursuant to 28 U.S.C. 1252, of the district court's far-reaching and unprecedented decision.

1. The Food Stamp program is a federally-funded, state-administered effort to "permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power." 7 U.S.C. 2011. Households with aggregate income and financial resources below specified national standards may participate. 7 U.S.C. (& Supp. I) 2014. They receive coupons (food stamps) that can be used for food purchases at retail stores. 7 U.S.C. 2013. Over 21 million persons received food stamps in 1983, representing a federal outlay of over $11.1 billion. See Bureau of the Census, U.S. Dep't of Commerce, *Statistical Abstract of the United States 198*, at 122-123 (105th ed.).

Although the federal government is responsible for establishing eligibility standards, see 7 U.S.C. (& Supp. I) 2014, the states have primary responsibility for distributing food stamps. See 7 U.S.C. (& Supp. I) 2020; *Atkins* v. *Parker*, No. 83-1660 (June 4, 1985), slip op. 2. State agencies are authorized to allot food stamps to each eligible household in an amount based on the cost of a "thrifty food plan," reduced by 30% of the household's income. 7 U.S.C. 2017. The "thrifty food plan" is the diet, as determined by the Secretary, necessary to feed an average family of four. 7 U.S.C. 2012(o). The cost of the diet is used to calculate standard household allotments, based on household size, that "tak[e] into account economies of scale." *Ibid.*; see 7 C.F.R. 273.10 (e)(4); 49 Fed. Reg. 42765 (1984).

Because food stamps are distributed on the basis of household units, the definition of "household" is central to the amount of the entitlement. The 1964 Act defined "household" broadly to include virtually any single individual who prepared his own meals using separate cooking facilities and virtually any group of individuals that functioned as a single economic unit and shared common cooking facilities. See 7 U.S.C. (1964 ed.) 2012(e). However, as the Food Stamp program grew,[1] Congress gave the term a more exacting definition.

Congress amended the definition of "household" in 1971 to exclude most groups of unrelated persons from participation in the Food Stamp program. See 7 U.S.C. (Supp II 1972) 2012(e). However, this Court declared the amendment unconstitutional, concluding that it represented purposeful discrimination against "hippie communes." *United States Department of Agriculture* v. *Moreno*, 413 U.S. 528 (1973). Congress again amended the definition in 1977, requiring groups of individuals, whether related or unrelated, who customarily purchased and prepared meals together, to be treated as a single household. 7 U.S.C. (Supp. II 1977) 2012(i). The definition provided that individuals, whether living alone or with others, could qualify as distinct households provided that each customarily purchased food and prepared meals separately. *Ibid.* The amendment was

[1] In 1965, approximately 633,000 persons participated in the Food Stamp program, representing a federal outlay of $33 million. By 1970, participation had grown to nearly 6.5 million persons, representing a federal outlay of $550 million. In 1975, nearly 20 million persons participated, representing a federal outlay of over $4.3 billion. See Bureau of the Census, U.S. Dep't of Commerce, *Statistical Abstract of the United States 1985*, at 123 (105th ed.).

intended to end the focus on cooking facilities and "economic units" in classifying households, concentrating instead on "what the household members do with their food money." H.R. Rep. 95-464, 95th Cong., 1st Sess. 143 (1977).[2]

In 1981, Congress conducted hearings that revealed widespread abuse of the Food Stamp program.[3] It responded to the evidence of recipient fraud by broadly reforming portions of the program, including the definition of "household." These changes, enacted as part of the 1981 and 1982 Omnibus Budget Reconciliation Acts, Pub. L. No. 97-35, Tit. I, 95 Stat. 358, and Pub. L. No. 97-253, Tit. I, Subtit. E, 96 Stat. 772, precipitated the present litigation.

The 1981 modifications addressed, among other matters, the application of the term "household" to parents and children. Congress provided that parents and children who live together shall comprise a single household for food stamp purposes, regardless of whether they purchase food and prepare meals separately or together, unless one of the parents is at least 60 years old. 7 U.S.C. (Supp. V 1981) 2012(i).

[2] The House Committee expressly observed that "some persons who constitute [a single] eating unit may currently be certified as separate households because they are separate economic units. The Committee believes that their eating unit status, not their economic unit status, is what is relevant to the food stamp program." H.R. Rep. 95-464, *supra*, at 143.

[3] See *Proposed Reauthorization of the Food and Agriculture Act of 1977 (Food Stamps): Hearings Before the Senate Comm. on Agriculture, Nutrition, and Forestry*, 97th Cong., 1st Sess. Pt. II (1981) [hereinafter cited as *1981 Hearings*]. The Chairman of the Senate Committee cited estimates by the Administration and congressional investigators that from 11 to 20% of food stamp benefits were issued in error. *Id.* at 3 (statement of Chairman Helms).

The Senate Report indicates that this change was "designed to prevent household members from artificially claiming to be separate households although they live and prepare meals together." S. Rep. 97-128, 97th Cong., 1st Sess. 31 (1981). It explains (*id.* at 31-32):

> [B]ecause of economics of scale, small * * * households are provided more food stamps per person than larger households * * *.
>
> * * * * *
>
> Current law results in some individuals claiming separate household status for purposes of obtaining food stamp benefits to which they would not otherwise be entitled. This results when the individual claims separate household status and indicates he has zero gross income. The individual could be certified as a separate household although, in fact, he is being supported by his parents.
>
> * * * * *
>
> By allowing an exception for parents 60 years of age and older, those parents most likely to reside with their children, but who truly maintain separate household status, will not be barred from participation as separate households.

See also H.R. Rep. 97-106, 97th Cong., 1st Sess. 118-119 (1981). The Senate Committee on the Budget estimated that this change, together with a change eliminating boarders from participation in the Food Stamp program, would save $195 million in fiscal years 1982-1984. See S. Rep. 97-139, 97th Cong., 1st Sess. 52-53 (1981).

The 1982 modifications further refined the definition of "household" to prevent food stamp abuses. The principal change, presently codified with the 1981 modifications at 7 U.S.C. 2012(i), prohibits siblings, as well as parents and children, from increasing their food stamp benefits by splintering into separate "households." It was enacted with an accompanying provision excepting disabled and elderly family members from the restriction. See *ibid.*; 7 U.S.C. 2012(r). These changes were adopted, together with other measures, upon the advice of federal and state food stamp administrators. See H.R. Rep. 97-687, 97th Cong., 2d Sess. 6, 25 (1982). The House Committee on Agriculture estimated that they would result in savings of $120 million in fiscal years 1983-1985. *Id.* at 105.[4]

Thus, Congress carefully modified and refined the definition of "household" to reduce widespread fraud in the Food Stamp program and to preserve the public's limited welfare resources for the truly needy. The present definition, treating most parents and children, or siblings, who live together as single households for Food Stamp entitlement purposes, reflects a considered response to the persistent problem of family groups mischaracterizing their food purchasing and preparation habits to obtain undeserved food stamp benefits.

2. In 1981, Natividad Castillo, his wife Petra Sosa, and their children, moved into the home of Sosa's daughter, Teresa Barrera (App., *infra*, 17a). The Castillo family applied for food stamp benefits from the Brownsville, Texas Food Stamp Office. Although

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[4] The Senate Committee on Agriculture, Nutrition, and Forestry recommended that all related persons be treated as a single household unless one of the related persons is elderly or disabled. See S. Rep. 97-504, 97th Cong., 2d Sess. 24-25, 87-88 (1982). However, the House proposal, limited to parents, children, and siblings, was adopted in conference. See H.R. Conf. Rep. 97-759, 97th Cong., 2d Sess. 62-63 (1982).

the Barrera family already received food stamps, the Castillos claimed that they were entitled to their own food stamp allotment because they did not purchase food in common with the Barreras and the two families were not "living as one economic unit" (*id.* at 18a). The Food Stamp Office denied the request, concluding that the Castillo and Barrera families constituted a single household within the meaning of 7 U.S.C. 2012(i). The Office indicated, however, that Barrera's food stamp allotment would be supplemented to reflect an increase in the household's size (App., *infra*, 18a).

Shortly thereafter, the Castillo family sued state food stamp officials in the United States District Court for the Southern District of Texas, claiming, inter alia, that the denial of their food stamp request violated the Fifth and Fourteenth Amendments. The district court issued a temporary restraining order prohibiting the state agencies from denying the Castillos food stamp benefits on grounds other than their family income. The Castillos eventually added additional plaintiffs and joined the Secretary of Agriculture as a defendant.

The district court consolidated the Castillos' action with three similar actions by family groups alleging that the revised definition of the term "household" unconstitutionally denied them separate household status and attendant food stamp benefits.[5] The court

[5] In Civil Action No. B-82-21, Robert Cody and his family live with Robert Cody's mother, a single person who already receives food stamps. In Civil Action B-82-7, Sylvia Nieto and her child live with Sylvia Nieto's parents, a couple that does not qualify for food stamps. In Civil Action No. B-83-106, Cecilia Villafranca and her children live with Cecilia Villafranca's brother, and their combined household income exceeds the food stamp eligibility requirements.

then considered the constitutional challenge to 7 U.S.C. 2012(i) on cross-motions for summary judgment. It ruled that Section 2012(i) violates equal protection principles of the Fifth Amendment's Due Process Clause by discriminating against family members and impermissibly burdening family decisions to live together (App., *infra*, 1a-8a).

The district court recognized that a social welfare program may generally distinguish among benefit recipients provided that the distinctions do not " 'invidiously discriminate * * * on the basis of criteria which bear no rational relation to a legitimate legislative goal' " (App., *infra*, 3a-4a, quoting *Weinberger* v. *Salfi*, 422 U.S. 749, 772 (1975)). And the court acknowledged that Section 2012(i), which was enacted to limit claims of separate household status among family members, "conforms to the 'rational basis' test as it is pronounced in *Salfi*" (App., *infra*, 6a). However, the court stated that "a great amount of inconsistency surrounds *Salfi*," noting that "such a limitation does not apply to gender-based classifications" (*ibid.*, citing *Califano* v. *Goldfarb*, 430 U.S. 199, 210-212 (1977)).

The district court therefore queried "whether family-based classifications are subject to such limitations" (App., *infra*, 6a). It turned for guidance to *Cleveland Board of Education* v. *LaFleur*, 414 U.S. 632 (1974), and *Moore* v. *City of East Cleveland*, 431 U.S. 494 (1977). Relying on these cases, the court concluded that "[i]t is clear that family life-styles have been afforded a stricter standard of review than the 'rational basis' test as it is pronounced in *Salfi*" (App., *infra*, 7a).

The district court attached "even greater importance" (App., *infra*, 7a) to this Court's decision in

United States Department of Agriculture v. *Moreno*, 413 U.S. 528 (1973). That decision held that a provision of the Food Stamp Act, denying benefits to cohabiting, unrelated individuals, was inconsistent with the Due Process Clause because it represented a "bare congressional desire to harm a politically unpopular group" (413 U.S. at 534). The district court reasoned that "if the Supreme Court is willing to protect unpopular political groups it should be even more willing to protect the traditional family value of living together" (App., *infra*, 8a).

The district court thus found that "[f]amily type classifications are clearly deserving of the judicial scrutiny that was applied in" *Goldfarb* (App., *infra*, 7a). It concluded, without further analysis, that the provisions of Section 2012(i), limiting family member eligibility for separate household status, "are discriminatory and in violation of the Plaintiffs' Fifth Amendment rights" (App., *infra*, 8a). The court permanently enjoined enforcement of these provisions against the plaintiffs.

THE QUESTION IS SUBSTANTIAL

The district court has held unconstitutional a carefully considered legislative attempt to correct widespread abuse in the Food Stamp program. The court's decision, by its own admission (App., *infra*, 3a), departs from established equal protection jurisprudence. It employs heightened scrutiny to a social welfare classification that does not involve a "suspect" or "quasi-suspect" class, justifying its result through the unsupportable theory that Congress, in amending the definition of the term "household," has discriminated against families and impermissibly burdened their fundamental rights.

The district court's ultimate conclusion—that the Food Stamp program must apply the same limitations to family groups that it applies to groups of unrelated individuals—has the practical effect of ascribing constitutional status to a family member's decision to purchase food and prepare meals apart from the parents, children, or siblings with whom he lives. This result cannot be reconciled with equal protection principles or common sense; moreover, it represents a striking lack of deference to "the duly enacted and carefully considered decision of a coequal and representative branch of our Government." *Walters* v. *National Association of Radiation Survivors*, No. 84-571 (June 28, 1985), slip op. 13. Thus, the question presented by this appeal is substantial; indeed, the answer is so clear that we suggest that this Court consider summary reversal.

1. Equal protection principles generally require that legislation accord like treatment to similarly situated individuals. See, *e.g.*, *City of Cleburne* v. *Cleburne Living Center, Inc.*, No. 84-468 (July 1, 1985), slip op. 6; *Plyler* v. *Doe*, 457 U.S. 202, 216 (1982). But the precept of equal protection does not preclude legislators from making rational distinctions. *Ibid.* "A legislature must have substantial latitude to establish classifications that roughly approximate the nature of the problem perceived, that accommodate competing concerns both public and private, and that account for limitations on the practical ability of [government] to remedy every ill." *Ibid.* The judiciary therefore gives broad deference to the choices of Congress, "the appropriate representative body through which the public makes democratic choices among alternative solutions to social and economic problems." *Schweiker* v. *Wilson*, 450 U.S. 221,

230 (1981). A legislative choice is subjected to heightened scrutiny only if it "employs a classification that is inherently invidious or that infringes on fundamental rights." *Ibid.*

These principles confirm that Congress acted well within its powers in amending 7 U.S.C. 2012(i). Congress concluded, quite reasonably, that parents, children, and siblings who reside under the same roof are more likely to purchase food and prepare meals together than other persons. It therefore precluded such family members from claiming separate household status for food stamp purposes because their claims were more likely to be fraudulent. The different treatment that Section 2012(i) accords to family members advances a legitimate government interest—preserving the integrity of benefits distribution—in a way that cannot be described as "patently arbitrary or irrational," *U.S. Railroad Retirement Bd.* v. *Fritz*, 449 U.S. 166, 177 (1980), and thus easily meets the traditional "rational basis" test applied to public welfare programs. See *Weinberger* v. *Salfi*, 422 U.S. 749, 772 (1975). See also *Schweiker* v. *Wilson*, 450 U.S. at 230; *Vance* v. *Bradley*, 440 U.S. 93, 97 (1979); *Fleming* v. *Nestor*, 363 U.S. 603, 611 (1960).

The district court acknowledged (App., *infra*, 6a) that Section 2012(i) "conforms to the 'rational basis' test as it is pronounced in *Salfi*." Indeed, this conclusion is manifest. The legislative history reveals that Congress carefully considered the problem of widespread fraud in the Food Stamp program. See generally *1981 Hearings*. It received recommendations from federal, state, and local administrators that the definition of "household" should be tightened. See S. Rep. 97-504, 97th Cong., 2d Sess. 25-26 (1982); S. Rep. 97-128, *supra*, at 31-32; *1981 Hearings* 31-

32, 42, 305-306, 308-311. Congress agreed that it had to deal with the problem of "some closely related individuals claiming separate household status for purposes of obtaining food stamp benefits to which they would not otherwise be entitled." H.R. Rep. 97-106, *supra*, at 119; see also S. Rep. 97-128, *supra*, at 31. Faced with the "administrative difficulties of individual eligibility determinations," *Salfi*, 422 U.S. at 784, Congress responded by establishing prophylactic rules that would "eliminate the potential for this type of program abuse." H.R. Rep. 97-106, *supra*, at 119; see also S. Rep. 97-128, *supra*, at 32.[6] These rules represent Congress's legitimate policy determination that the Food Stamp program, and its millions of beneficiaries, would benefit from a definition of "household" that prevents fraudulent claims. See *Salfi*, 422 U.S. at 784. Congress rationally concluded "that generalized rules [were] appropriate to its pur-

[6] The testimony of food stamp fraud investigators in the 1981 Hearings established the need for general rules. Individual determinations are impractical because, as a Texas investigator explained, "[t]he complexity of the program works to the advantage of those determined to abuse it." *1981 Hearings* 52 (statement of E. Richards). The very size of the program prevents individual investigations. *Id.* at 51 (noting an investigation backlog of 10,000 cases in Texas alone). Moreover, the inherent difficulty of verifying whether families are preparing meals separately or together would make individual determinations particularly difficult in the present case. Any meaningful enforcement scheme would require huge commitments of investigative resources to determine meal purchasing and preparation habits. Indeed, an effective program might require rather elaborate, and perhaps intrusive, surveillance and verification of family activities. Thus, Congress quite reasonably chose "to avoid the burden and expense of specific case-by-case determination." *Mathews* v. *Lucas*, 427 U.S. 495, 509 (1976).

poses and concerns" and "that the difficulties of individual determinations outweigh the marginal increments in the precise effectuation of congressional concern which they might be expected to produce." *Id.* at 785. See *Mathews* v. *De Castro*, 429 U.S. 181, 189 (1976).[7]

2. This case should have ended upon that conclusion. Instead, the district court discerned a need for heightened scrutiny. In departing from the traditional "rational basis" analysis, the court relied, indiscriminately, upon cases involving "quasi-suspect" classifications, fundamental rights, and rational basis scrutiny. This amalgam of loosely connected precedent cannot support the application of heightened scrutiny to Section 2012(i)'s legislative classification.

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[7] Congress specifically emphasized that the new provisions would "not disqualify legitimately poor households that apply as a single unit, but merely require that family units apply as single households, rather than splintering for the purpose of receiving higher benefits." S. Rep. 97-128, *supra*, at 32. Moreover, the provisions were carefully tailored to exclude the disabled and the elderly from the single household requirement, assuring that "those parents most likely to reside with their children, but who truly maintain separate household status, will not be barred from participation as separate households." *Ibid.* No doubt, Congress could have prohibited *any* member of a group of individuals who live together from claiming separate household status for food stamp purposes. Instead, it carefully redefined "household" to include only certain closely related family members, recognizing those persons were most likely to purchase food and prepare meals together, and were most conveniently situated to submit fraudulent claims of separate household eligibility. Thus, Section 2012(i), as amended, is plainly the product of a conscientious and thorough deliberative process. See S. Rep. 97-504, *supra*, at 24-27; H.R. Rep. 97-687, *supra*, at 25, 105; S. Rep. 97-128, *supra*, at 31-32; H.R. Rep. 97-106, *supra*, at 118-119.

a. The district court suggested, without clear explanation, that this Court's decision in *Califano* v. *Goldfarb*, 430 U.S. 199 (1977), recognizing gender as a "quasi-suspect" classification, justified heightened scrutiny in the present case (App., *infra*, 6a). It seems unlikely that the district court seriously meant to imply that family members who live together constitute a "quasi-suspect" class. That contention is, of course, facially meritless.[8]

b. The district court's suggestion (App., *infra*, 7a-8a) that Section 2012(i) creates a classification system that infringes upon the "fundamental right" of food stamp recipients to make choices concerning family living arrangements is also unsupportable. This Court has held that certain family-based choices

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[8] Cohabiting family members exhibit none of the basic indicia of a suspect class—they have not been not subject to historic discrimination, they do not exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group, and they are neither a minority nor a politically powerless segment of society. Indeed, families have traditionally received favored status in American cultural and political processes. See generally Hafen, *The Constitutional Status of Marriage, Kinship, and Sexual Privacy—Balancing the Individual and Social Interests*, 81 Mich. L. Rev. 463 (1983).

Thus, family members fall far short of even the most minimal requirements for heightened scrutiny under equal protection principles. See, *e.g.*, *City of Cleburne* v. *Cleburne Living Center, Inc.*, No. 84-468 (July 1, 1985), slip op. 6-13 (declining to recognize the mentally retarded as a "quasi-suspect" class). Likewise, members of low-income families—the subgroup served by the Food Stamp program—do not meet suspect class requirements. The inclusion of poverty as an additional class characteristic does not change the constitutional calculus. See *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1 (1973).

do enjoy constitutionally protected status. See, *e.g.*, *Cleveland Board of Education* v. *LaFleur*, 414 U.S. 632, 639-640 (1974); *Loving* v. *Virginia*, 388 U.S. 1, 12 (1967). Thus, when the government intrudes on basic choices concerning the composition of the family unit, the Court will "examine carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation." *Moore* v. *City of East Cleveland*, 431 U.S. 494, 499 (1977). But such scrutiny is appropriate only when the government regulation directly and substantially interferes with family choices. *Zablocki* v. *Redhail*, 434 U.S. 374, 386, 387 n.12 (1978); *id.* at 403 (Stevens, J., concurring); *Califano* v. *Jobst*, 434 U.S. 47, 58 (1977).

Unlike the zoning provisions at issue in *Moore*, which prohibited a grandmother from living together with her grandchild, or the statute in *Zablocki*, which provided that members of a certain class could not marry, Section 2012(i) does not have a direct and substantial impact upon family living arrangements. Section 2012(i) does not prevent any group of persons, related or unrelated, from living or dining together. The Act's definition of "household" merely reflects a congressional determination, concededly rational, that closely related persons who live together should receive food stamp benefits based on the economic needs of a single household that purchases food and prepares meals together. It ensures that the amount of a family's food stamp entitlement reflects the economies of scale that a family can enjoy in jointly purchasing and preparing meals. Section 2012(i) thus simply adjusts food stamp benefits in light of the cooperative arrangements that families can employ; it does not amount to a constitutionally significant intrusion on family living arrangements.

Admittedly, Section 2012(i) may encourage families to take advantage of the savings available in joint meal purchase and preparation and may discourage family members from purchasing food and preparing meals separate and apart from the parents, children, or siblings with whom they live. But this limitation on the "right" to dine separately hardly amounts to the kind of interference with family relationships that this Court has found constitutionally significant. See *Zablocki* v. *Redhail*, 434 U.S. at 386-387 ("reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed"); *Califano* v. *Jobst*, 434 U.S. at 58 (Social Security provisions terminating a child's benefits upon marriage do not violate equal protection principles even though they "may have an impact on [the child's] desire to marry, and may make some suitors less welcome than others.").

In particular, Section 2012(i) does not disrupt family bonds by preventing closely related individuals from living together. Under Section 2012(i), a family's Food Stamp entitlement differs from that of an unrelated group only to the extent that it reflects the economies of scale derived from cohabitation. Thus, while Section 2012(i) may provide family members with an increased incentive to prepare meals together and reap this economy, it generally provides no incentive to live apart simply to collect increased food stamp allotments. And even if there might be exceptional cases in which the statute has that indirect effect, such cases would not control the equal protection inquiry. See, *e.g.*, *Schweiker* v. *Hogan*, 457 U.S. 569, 589 (1982); *Vance* v. *Bradley*, 440 U.S. at 108.[9]

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[9] Participation in the Food Stamp program is premised on household income. Thus, in some circumstances, a family that

Likewise, Section 2012(i)'s distribution of benefits does not impair a fundamental liberty simply because it does not subsidize the full range of possible family living arrangements. Although the Due Process Clause "protect[s] against unwarranted government interference with freedom of choice in the context of certain personal decisions, it does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom." *Harris* v. *McRae*, 448 U.S. 297, 317-318 (1980). Family members may sincerely desire to share the same living quarters while purchasing food and preparing meals separately; however, the public is not obligated to subsidize that choice. Congress may freely create a financial incentive for family members to purchase food and prepare meals together without disturbing a family member's "range of choice" concerning family living arrangements. See 448 U.S. at 316-318.[10]

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would be ineligible for participation in the program if treated as a single household could become eligible if the individual members lived apart. Family members intent upon receiving food stamp benefits might conceivably adjust their living arrangements in response. But a family member's exercise of this option does not constitute government impairment of any fundamental family right. The government does not intrude upon family relationships simply because family members with combined income in excess of public welfare eligibility requirements may choose to adjust their life-styles to qualify for welfare benefits.

[10] By the same token, Section 2012(i) does not infringe on the constitutional rights of family members, presently living apart and receiving food stamp benefits, who wish to live together and preserve the same benefit level. At bottom, these family members are simply demanding "a constitutional entitlement to the financial resources to avail [themselves] of the full range of protected choices." 448 U.S. at 316.

In sum, the district court was plainly wrong in suggesting that Section 2012(i) creates a classification that burdens family decisions to live together. Section 2012(i) does not impair a family member's exercise of fundamental rights.

c. The district court also premised its heightened scrutiny requirement on this Court's decision in *United States Department of Agriculture* v. *Moreno*, 413 U.S. 528 (1973). See App., *infra*, 7a. In *Moreno*, the Court applied equal protection principles to invalidate provisions of the Food Stamp Act that excluded benefits to households composed of unrelated persons. Examining the scant legislative history behind that exemption, the Court concluded that the provisions had no purpose other than "a bare congressional desire to harm a politically unpopular group." 413 U.S. at 534. However, the Court clearly employed "rational basis" scrutiny to reach that result. *Id.* at 532-534. Thus, *Moreno* offers no support for applying heightened scrutiny to the present case.[11]

3. The district court's partial invalidation of Section 2012(i) directly impairs an important congressional attempt to reduce serious abuses in the Food Stamp program. Over $11 billion in food stamp bene-

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[11] We note that the district court plainly misapplied *Moreno* in concluding that the decision would preclude food stamp benefit limitations even in the absence of "a congressional pronouncement of a desire to harm" (App., *infra*, 8a). *Moreno* clearly turned on a finding that Congress's sole reason for enacting the challenged legislation was its desire to disadvantage a "politically unpopular group," rather than to serve a legitimate government interest. 413 U.S. at 534. Thus, contrary to the district court's statement, congressional intent was critical to the Court's conclusion.

fits were distributed to eight million households in 1980, representing the Nation's "second most costly 'needs-based' Federal assistance program." S. Rep. 97-128, *supra*, at 2. However, the Administration and congressional sources estimated that from 11% to 20% of these benefits were issued in error. See *1981 Hearings* 3. The refinement of Section 2012(i)'s definition of "household" represents a significant effort to address these staggering losses. As previously noted, Congress estimated that the 1981 and 1982 amendments would result in three year savings, respectively, of $195 million and $120 million. S. Rep. 97-139, *supra*, at 52-53; H.R. Rep. 97-687, *supra*, at 105.

Section 2012(i), as amended, attempts to "place a reasonable control on a situation that State and local administrators have identified as one which requires congressional action." S. Rep. 97-504, *supra*, at 25.[12] It is a rational legislative response to perceived abuses in the Food Stamp program.[13] If the district

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[12] Despite the substantial steps that Congress has taken to curtail abuse in the Food Stamp program, overpayments continue to present a serious problem. See, *e.g.*, *Oversight of the Food Stamp Program: Hearings Before the Senate Comm. on Agriculture, Nutrition, and Forestry and the Subcomm. on Nutrition of the Senate Comm. on Agriculture, Nutrition, and Forestry*, 98th Cong., 2d Sess. 255 (1984) (excerpt from a General Accounting Office report estimating that $1 billion in food stamp benefits are issued in error annually).

[13] Indeed, Section 2012(i) would withstand the "intermediate" level of scrutiny that the district court mistakenly required. The sheer magnitude of food stamp fraud and the impossibility of policing it on a case-by-case basis provide "an exceedingly persuasive justification" for redefining the term "household" to prevent widespread systematic abuses.

court's decision is permitted to stand, it will result in payment of millions of dollars in food stamp benefits to the undeserving, diverting the Nation's limited welfare resources from the truly needy to those who choose to abuse the benefits program.

CONCLUSION

Probable jurisdiction should be noted. In light of the district court's clear error, the Court may wish to consider summary reversal.

Respectfully submitted.

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AUGUST 1985

Cf. *Heckler* v. *Mathews*, No. 82-1050 (Mar. 5, 1984), slip op. 19. Likewise, the judicious deliberation and weighing of competing interests that accompanied the redefinition indicate that the changes were "plainly adopted 'through reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions.'" *Mathews*, slip op. 20 (quoting *Mississippi University for Women* v. *Hogan*, 458 U.S. 718, 726 (1982)). Thus, Section 2012(i)'s definition of "household" is substantially related to important government objectives and therefore constitutional even under heightened scrutiny.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

C.A. No. B-81-260

Consolidated with:

C.A. No. B-82-7
C.A. No. B-82-21
C.A. No. B-83-106

NATIVIDAD CASTILLO, ET AL.

vs.

JOHN BLOCK, ET AL.

[Filed Apr. 23, 1985]

MEMORANDUM AND ORDER

Plaintiffs bring this action seeking to invalidate amendments to the Food Stamp Program. Plaintiffs contend the amendments violate their Constitutional rights of Due Process and Equal Protection and that the Secretary of Agriculture failed to promulgate the amendments' implementing rules in accordance with 5 U.S.C. § 553(b).

The facts are undisputed and both Plaintiffs and Defendants request Summary Judgment in their favor. Additionally, the State Defendants have filed

a Motion to Dismiss involving issues unrelated to those above.

In light of *Levesque v. Block*, 723 F.2d 175 (1st Cir. 1983), the present rules, as promulgated, are valid and further rulemaking is unnecessary. Furthermore, for reasons stated in the Court's Supplemental Memorandum, State Defendant's Motion to Dismiss is denied. The remainder of the Court's discussion will concern itself with the constitutional issue.

BACKGROUND AND FINDINGS OF FACT

Food stamp allotments are determined on the basis of "households". 7 U.S.C. § 2012(a),(i). "Household" means an individual or group of individuals living together who "customarily purchase food and prepare meals together for home consumption." 7 U.S.C. § 2012(i). It is advantageous, as a Congressional Committee noted, for a group of individuals to live together and be considered separate households. 7 U.S.C. § 2012(o), S.Rep. No. 97-504, 97th Cong., 2nd Sess., 24, 25. For example, individuals living together will receive fewer food stamps as one household than they would as separate households. *Id.* Finally, if the combined resources of a household exceeds a certain level, the household will be denied benefits. 7 U.S.C. § 2014(a).

Present [*sic*] before the Court is 7 U.S.C. 2012(i), the codification of various congressional amendments. The statute provides, "that parents and children, or siblings, who live together shall be treated as a group of individuals who customarily purchase and prepare meals together for home consumption even if they do not do so". 7 U.S.C. 2012(i). In sum, the statute prevents the listed family members from living together and having separate household status but allows other unrelated groups to obtain separate household status while living together and receive greater benefits. Furthermore, it is possible that these family members who qualify for benefits as separate households could lose their benefits altogether if their pooled assets exceed the maximum income to receive benefits.

The Plaintiffs are various groups of family members who generally buy and prepare their meals as separate economic units and will either lose their benefits or have their benefits decreased as a result of these amendments. For example, Plaintiff Villafranca was denied benefits because she resided with her brother and their combined resources exceed the eligibility standards. Plaintiffs allege the present statute is discriminatory and therefore is unconstitutional as a violation of their Fifth Amendment rights. This Court agrees.

CONCLUSIONS OF LAW

Congress has developed a classification scheme whereby different individuals in a similar situation are treated differently. This classification is based on family members' choices to live together. Since our holding is contrary to *Weinberger v. Salfi*, 422 U.S. 749 (1975), a discussion of *Salfi* and its application to the present case is worthwhile.

The *Salfi* case involved a provision of the Social Security Act which denied insurance benefits to certain surviving wives and step-children. *Id.* at 753, 754. If these individuals and the wage earner commenced their relationships less than nine months prior to wage earner's death, they were denied insurance benefits. *Id.* at 754, 755. The court held:

> [A] noncontractual claim to receive funds from the public treasury enjoys *no constitutionally protected status*, though of course Congress may not invidiously discriminate among such claimants on the basis of a "bare congressional desire to harm a politically unpopular group," or on the basis of criteria which bear no rational relation to a legitimate legislative goal." *Id.* at 772 (citations omitted) (emphasis added).

It is clear that the Supreme Court intended to severely limit the availability of the Fifth and Fourteenth Amendments to strike down legislation involving welfare benefits. Since the present classification does not involve a politically unpopular group, this Court would next determine if the regulation has some rational relation to a congressional goal.

Prior to *Salfi* the Supreme Court had clearly enunciated the "rational basis" test as it applies to welfare benefits.

> In the area of economics and social welfare a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. The classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it resulted in some inequality." "The problems of government are practical ones and may justify, if they do not require, rough accommodations—*illogical, it may be, and unscientific.*" *Dandridge v. Williams*, 397 U.S. 471, 485 (1970) (citations omitted) (emphasis added).

This same analysis is applicable to the Fifth Amendment and hence the present statute. *See* [*Bolling*] *v. Sharp*[*e*], 347 U.S. 497, 499 (1954). With this standard in mind the Court now turns its attention to the amendments in the instant case.

Congress had become concerned that the present regulations were subject to fraudulent practices. The Senate Committee noted that individuals who live together for mutual support, could manipulate the current rules so as to obtain separate household status and receive greater benefits. S.Rep. No. 97-504, 97th Cong., 2nd Sess., 24, 25. The Committee justified the regulations in the following manner:

> Limiting the availability of the "purchase and prepare food separately" rule to those most likely to actually be separate households, although living together with others for reasons of economy or health (i.e., unrelated persons and the elderly or disabled), would place a reasonable control on a situation that State and local administrators have identified as one which requires congressional action. *Id.* at 25.

Finally, the Committee noticed the time consuming burden that is placed on administrators in attempting to make individual household determinations as to "household" status, but initially recognized that a case-by-case determination could be utilized for unrelated individuals since there are several situations where separate household status may be justified.[1] *Id.* at 25, 26.

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[1] These situations include:

> Individuals who live together who work different shifts and purchase food and prepare meals separately.
>
> Individuals who live together but have separate cooking facilities and purchase food and prepare meals separately.
>
> Individuals who have a live-in medical attendant who purchases food and prepare meals separately. *Id.* at 25.

It is clear to this Court that family members could be faced with these same situations. But under the *Salfi* analysis, it is

Congress has perceived an abuse of the Food Stamp Program and taken action to remedy that abuse. It is rational to believe that people who live together would declare that they prepare their meals separately so as to receive larger benefits.[2] While the present regulations may be "under-inclusive" it [*sic*] is still rationally related to a perceived abuse which Congress has sought to remedy.[3] Furthermore, the Committee noticed that "an open-ended rule [*sic*] allowing every household to fragment it's [*sic*] household status may be subject to manipulation. S.Rep. No. 97-504, 97th Cong., 2nd Sess., 25. The present regulation conforms to the "rational basis" test as it is pronounced in *Salfi*.

However, a great amount of inconsistency surrounds *Salfi*. The Supreme Court subsequently held that such a limitation does not apply to gender-based classifications. *Califano v. Goldfarb*, 430 U.S. 199, 210-212 (1977). The question then arises as to whether family-based classifications are subject to such limitations. Several cases have attempted to de-

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the duty of Congress and not the Court to determine what is logical and proper to achieve legislative purposes. *Id.* at 769, 770.

[2] It is also probably rational to believe that the possibility of having separate household status while living together may be one of the very reasons related individuals cohabit. "Like the early history of analogous requirements, they reflect congressional concern with the possibility of relationships entered for the purpose of obtaining benefits". *Salfi* at 779.

[3] "While such a limitation doubtless proves in particular cases to be 'under inclusive' or 'over inclusive,' in light of its presumed purposes, it is nonetheless a widely accepted response to legitimate interests in administrative economy and certainty of coverage for those who meet its terms." *Id.* at 776.

fine the family's constitutional status. In *Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974), the court held, "that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." *Id.* at 639, 640.[4] Similarly, in *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494 (1977), the court stated, "when the government intrudes on choices concerning family living arrangements, this Court must carefully examine the importance of the government interests advanced and the extent to which they are served by the challenged regulation." *Id.* at 499. It is clear that family lifestyles have been afforded a stricter standard of review than the "rational basis" test as it is pronounced in *Salfi*.

Yet of even greater importance to the present case is the Supreme Court's holding in *United States Dept. of Agriculture v. Moreno*, 413 U.S. 528 (1973). *Moreno* involved a regulation which excluded from participation in the Food Stamp Program any household containing an individual who is "unrelated" to any household member. *Id.* at 529, 530. In declaring the regulation unconstitutional on equal protection grounds, the Court noted, "a bare congressional intent to harm a politically unpopular group cannot constitute a legitimate governmental interest". *Id.* at 534.

With these holdings in mind, this Court is compelled to rule against the *Salfi* limitation. Family type classifications are clearly deserving of the judicial scrutiny that was applied in *Califano*. Further-

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[4] However, the Court in *Salfi* cited *LaFleur* and, subsequently, restricted the application of the Fifth and Fourteenth Amendments to welfare benefits. *Salfi* at 771, 772.

more, if the Supreme Court is willing to protect unpopular political groups it should even be more willing to protect the traditional family value of living together. Nor, is this Court persuaded that "a bare congressional desire to harm" should be a distinguishing factor between the facts here, and *Moreno*. Harm is harm, regardless of a congressional prouncement of a desire to harm. As such the amendments are discriminatory and in violation of the Plaintiffs' Fifth Amendment rights. Accordingly, Plaintiffs' Motion for Summary Judgment is granted in part and denied in part.

INJUNCTION

It is therefore ORDERED, ADJUDGED and DECREED that the Defendants are hereby permanently enjoined from enforcing, as to the present Plaintiffs, that part of 7 U.S.C. 2012(i) which states, "that parents and children, or siblings, who live together shall be treated as a group of individuals who customarily purchase and prepare meals together for home consumption even if they do not do so."

DONE at Brownsville, Texas this 23rd day of April, 1985.

/s/ Filemon B. Vela
FILEMON B. VELA
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

C.A. No. B-81-260

Consolidated with:

C.A. No. B-82-7
C.A. No. B-82-21
C.A. No. B-83-106

NATIVIDAD CASTILLO, ET AL.

vs.

JOHN BLOCK, ET AL.

[Filed Apr. 23, 1985]

SUPPLEMENTAL MEMORANDUM

The State Defendant has filed various other motions unrelated to Plaintiffs' Motion for Summary Judgment. The Court has chosen to address them here, separate from the constitutional issue. For the reasons stated below, the Motion to Dismiss is Denied.

JURISDICTION

Defendant argues that this Court lacks jurisdiction over the asserted matter. Plaintiffs challenge a federal law as being unconstitutional and improperly

promulgated by a federal officer. As such, jurisdiction of this matter is conferred under 28 U.S.C. § 1331.

FAILURE TO STATE A CLAIM

Defendant argues Plaintiff has not been deprived of a "property" interest that is protected by the Constitution. While at times such interests may be limited, it is well established that there exists a sufficient "property" interest in welfare benefits to invoke Equal Protection and Due Process. *United States Dep't of Agriculture v. Moreno*, 413 U.S. 528 (1973); *United States Dep't of Agriculture v. Murray*, 413 U.S. 508 (1973); *Goldberg v. Kelly*, 397 U.S.[] 254, 261-263 (1970).

DEFERRAL TO STATE AGENCY AND EXHAUSTION OF ADMINISTRATIVE REMEDIES

Defendant argues this matter must first be remanded to a state or federal agency. Defendant has failed to show a state agency or federal administrative body that could entertain jurisdiction over the present issues. Furthermore, it is clear that the court can address these issues without exhaustion of administrative remedies or state agency deferral. *Johnson v. Robison*, 415 U.S. 361, 368 (1973); *Mayor of Baltimore v. Matthews*, 562 F.2d 914, 919-921 (4th Cir. 1977); *Georgia Dep't of Transp. v. Dole*, 561 F.Supp. 1024, 1028, 1029 (N.D. Ga. 1983).

QUALIFIED IMMUNITY

Qualified immunity is not a defense where the court grants only injunctive relief. *Wood v. Strickland*, 420 U.S. 308, 314 n. 6 (1975); *Williams v.*

Caton, 443 F.2d 422, 428 (10th Cir. 1971); *James v. Wallace*, 382 F.Supp. 1177 (M.D. Ala. 1974).

ELEVENTH AMENDMENT

The Eleventh Amendment of the United States Constitution states: "The federal power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any Foreign State." Pursuant to this Amendment, Defendant argues this Court lacks jurisdiction over the state officers. However, in *Florida Dep't of State v. Treasure Salvors*, 458 U.S. 670, 689 (1982), the Supreme Court reiterated well established law in holding, "These cases make clear that the Eleventh Amendment does not bar an action against a state official that is based on a theory that the officer acted beyond the scope his statutory authority or, if within that authority, that such authority is unconstitutional." Additionally, in *Pennhurst State School and Hosp. v. Halderman*, —— U.S. ——, ——, 104 S.Ct. 900, 909 (1984), the Court stated, "[W]hen a Plaintiff sues a state official alleging a violation of federal law, the federal court may award an injunction that governs the official[']s future conduct, but not one that awards retroactive monetary relief." Since Plaintiffs allege a violation of federal law and seek an injunction against that law, the Eleventh Amendment does not bar this action.

42 U.S.C. § 1983

Plaintiffs seek relief pursuant to 42 U.S.C. § 1983 which provides remedies for civil rights violations committed under color of state law. Plaintiffs are

challenging the constitutionality of a congressional act and the promulgation of regulations to enforce that act. The Food Stamp Program is administered by state agencies, but is governed by federal statutes and regulations. 7 U.S.C. § 2020. So in the instant case, a state official of a state agency has acted pursuant to a federal law and only the federal law is being challenged.

A 1983 action must be dismissed where suit is brought for civil rights violations done under color of federal law. *See generally Norton v. McShane*, 332 F.2d 855, 862 (5th Cir. 1964); *Soldevila v. Secretary of Agriculture*, 512 F.2d 427, 429 (1st Cir. 1975); *and Johnson v. District of Southern Missouri Commissioners*, 258 F.Supp. 669 (W.D. Mo.) aff'd per curiam 368 F.2d 184 (8th Cir. 1966). It follows from these holdings and the above discussion that an action challenging a congressional enactment or federal rule promulgation is insufficient to establish civil rights violations done under color of state law.[1] As such, the 1983 action must be dismissed.

State Defendant seems to argue that a dismissal of the 1983 action will dismiss them as a party to the suit. However, in *Shaw v. Delta Air Lines, Inc.*, —— U.S. ——, ——, 103 S.Ct. 2890, 2899 n. 14 (1983), the Supreme Court held, "It is beyond dispute that federal courts have jurisdiction over suits

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[1] *See also Tyler v. MMES Pasqua and Toloso*, 748 F.2d 283 (5th Cir. 1984), where the court held suit could not be brought under 42 U.S.C. § 1983 where a state official violated the Food Stamp Act in denying expedited food stamp service. The court noted their analysis would also apply when the state refused to issue food stamps on a regular basis. *Id.* at 284 n. 4. If the Fifth Circuit was unwilling to extend a 1983 remedy in *Tyler*, it is extremely doubtful they would extend the remedy in this case.

to enjoin state officials from interfering with federal rights." As such this Court retains jurisdiction over the State Defendants for the purposes of injunctive relief.

It is therefore ORDERED, ADJUDGED and DECREED that State Defendants' Motion to Dismiss be in all thing DENIED.

DONE at Brownsville, Texas this 23rd day of April, 1985.

/s/ Filemon B. Vela
FILEMON B. VELA
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Civil Action No. B-81-260

NATIVIDAD CASTILLO; FERNANDO SOSA; PETRA SOSA, for herself and as next friend of ROBERTO SOSA, SAUL SOSA, ROY SOSA, and EDUARDO SOSA; CATALINA CASTILLO; NATIVIDAD CASTILLO and GRACIELA CASTILLO, Minors; BLANCA MARTINEZ, for herself and as next friend of VENESSA MARIE MARTINEZ, Minor; SARA CORTEZ, for herself and as next friend of PERLA RUBY CORTEZ and SYLVIA CORTEZ, Minors

vs.

JOHN BLOCK, in his capacity as Secretary of the United States Department of Agriculture; MARLIN JOHNSTON, in his capacity as the Director of the Department of Human Resources; and JOSE CAMPOS, in his capacity as the Program Director for the Brownsville Food Stamp Office of the Department of Human Resources

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Consolidated With:

Civil Action No. B-82-21

ROBERT CODY, JERRY CODY, for themselves and as next friend of GARY CODY and ROBIN CODY

vs.

JOHN BLOCK, in his capacity as Secretary of the United States Department of Agriculture; MARLIN

JOHNSTON, in his capacity as the Director of the Department of Human Resources; and RENE ZAMORA, in his capacity as the Program Director of the Harlingen Food Stamp Office of the Department of Human Resources

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Civil Action No. B-82-7

SYLVIA NIETO, for herself and as next friend on behalf of her son, ROLANDO NIETO, A Minor

vs.

JOHN BLOCK, in his capacity as Secretary of the United States Department of Agriculture; MARLIN JOHNSTON, in his capacity as the Director of the Department of Human Resources; and CRUZ CERVANTES in his capacity as the Supervisor for the Raymondville Food Stamp Office of the Department of Human Resources

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Civil Action No. B-83-106

CECILIA VILLAFRANCA, for herself and as next friend of ALBERTO TREVINO and ERIC VILLAFRANCA, Minors

vs.

JOHN BLOCK, in his capacity as Secretary of the United States Department of Agriculture; MARLIN JOHNSTON, in his capacity as the Director of the Department of Human Resources; and JOSE CAMPOS, in his capacity as the Program Director for the Brownsville Food Stamp Office of the Department of Human Resources

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[Filed May 17, 1985]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that John Block, in his capacity as Secretary of the United States Department of Agriculture, by his undersigned counsel, hereby appeals to the Supreme Court of the United States from the permanent injunction entered in this action on April 23, 1985.

This appeal is taken pursuant to Title 28, United States Code, Section 1252.

DATED: May 17, 1985

Respectfully submitted,

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APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS BROWNSVILLE DIVISION

NATIVIDAD CASTILLO, ET AL., PLAINTIFFS

vs.

JOSE CAMPOS, ET AL., DEFENDANTS

STATE OF TEXAS
COUNTY OF CAMERON

AFFIDAVIT

BEFORE ME, the undersigned, a Notary Public in and for said County, State of Texas, on this day personally appeared PETRA SOSA, after being by me duly sworn, deposes and says:

1. My name is PETRA SOSA. I am the mother of Fernando Sosa, Roberto Sosa, Saul Sosa, Roy Sosa, Eduardo Sosa, Catalina Castillo, Graciela Castillo, and Natividad Castillo. I am the wife of Natividad Castillo. My family and I are migrant farmworkers. We arrived in Brownsville, Texas from Michigan on September 26, 1981.

2. My children and I received our last income in Michigan where we worked as farm laborers. All the members of my family are presently unemployed. We spent most of our wages earned in Michigan for expenses incurred in traveling to Brownsville. The remainder of our income was spent for food during the first week in Brownsville.

3. My family and I are living in the home of Teresa Barrera, my oldest daughter. We are living there because we do not have sufficient resources to live in separate housing. Teresa Barrera has two small children, is unemployed, and receives food stamps and welfare. My family and the family of Teresa Barrera are not living as one economic unit. We do not combine our resources and we do not purchase food in common. My family and I are temporarily living with Teresa Barrera until we can afford separate housing.

4. I applied for food coupons on October 1, 1981 in the Brownsville Office. My application for food stamps was denied because my family was classified as belonging to the same household as the family of Teresa Barrera. Teresa Barrera applied during the last week of August for food coupons. She was certified for the months of September and October. She receives $233.00 of food coupons for her family of four. I was told my application could not be considered. The caseworker told me that Teresa Barrera would be issued supplemental food stamps in November because of the increase in the number of persons in the household. I told the food stamp office my family and I were in need of emergency food stamps. I was told I could not receive emergency food stamps. I was not asked any questions as to whether my family and the family of Teresa Barrera combined our resources, shared expenses, or purchased food together.

5. My family and I do not have any money to buy food. We do not have any assets except for a 1978 Dodge. If we do not receive food coupons for this month, Natividad Castillo, my eight children, and I will not be able to eat properly.

6. On Monday, October 5, 1981, I was given Twenty Dollars ($20.00) by Catholic Charities but this will not last long for ten people.

7. The facts contained in paragraphs 1-6 above have been explained to me in Spanish and they are true and correct to my own knowledge.

/s/ Petra Sosa
PETRA SOSA

SUBSCRIBED AND SWORN to before me on this the 7th of October, 1981.

/s/ Tomanita Paredes
Notary Public in and for
the State of Texas

[SEAL]

[SEAL]

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MOTION

Supreme Court, U.S.
FILED
OCT 23 1985
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 85-250

In The
Supreme Court of the United States
October Term, 1985

JOHN R. BLOCK, Secretary of Agriculture,
Appellant,

v.

NATIVIDAD CASTILLO, ET AL.,
Appellees.

On Appeal from the United States District Court for the Southern District of Texas

MOTION TO DISMISS OR AFFIRM

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QUESTION PRESENTED

The basis of this suit is the question, whether the government can enforce a law which arbitrarily creates an irrebutable presumption that under all circumstances related individuals who share living quarters, also share their resources and are always able to eat together.

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No. 85-250

In The

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October Term, 1985

JOHN R. BLOCK, Secretary of Agriculture,

Appellant,

v.

NATIVIDAD CASTILLO, ET AL.,

Appellees.

On Appeal from the United States District Court for the Southern District of Texas

MOTION TO DISMISS OR AFFIRM

Appellees, Natividad Castillo, et al., together with Sylvia Nieto, et al., Robert Cody, et al., and Cecilia Villafranca, et al., were Plaintiffs in the consolidated civil action below. They move to dismiss the appeal of John R. Block, Secretary of Agriculture, Appellant. In the alternative, Appellees move that the decision below be affirmed. John R. Block, Secretary of Agriculture, Defendant be-

low appealed. Neither Defendant Marlin Johnston, Director of the Texas Department of Human Resources nor the other Defendant state officials who administer the food stamp program have appealed from the District Court's judgment for the Plaintiffs.

The basis of this suit is the question, whether the government can enforce a law which arbitrarily creates an irrebutable presumption that under all circumstances related individuals who share living quarters, also share their resources and are always able to eat together.

A. QUESTION BEFORE THE COURT

Plaintiffs challenged the provisions of 7 U.S.C. 2012 (i) which defines "household" for the determination of food stamp eligibility. A "household" is defined as an individual or group of individuals living together "who customarily purchase food and prepare meals together for home consumption." 7 U.S.C. 2012 (i). Unrelated cohabiting individuals may show that they are separate households and receive a food stamp allotment based on their separate household status. 7 U.S.C. 2012 (a), (i). Parents, children and siblings are determined to be one household regardless of their circumstances. 7 U.S.C. 2012 (i). The conclusion that these related individuals comprise one household either totally deprives them of or reduces their food stamp allotments. 7 U.S.C. 2014 (a).

On Summary Judgment, supported by uncontroverted affidavit, the District Court found that the challenged amendments of 7 U.S.C. 2012 (i) violate Plaintiffs Fifth Amendment rights. 7 U.S.C. 2012 (i) limits the definition of "household". It allows unrelated individuals living

together to demonstrate that they customarily purchase and prepare meals separately for food stamp entitlement purposes. Close relatives (parents, children, and siblings) who live together are not allowed to demonstrate that they also purchase and prepare meals separately. The statute results in a denial of benefits altogether to an otherwise qualifying family who is taken in by another member of the family, even if the member of the family who shares his living quarters is only slightly above poverty level.[1] This is done because the statute creates an irrebutable presumption that in all instances adult family members pool resources when they live together and that they in all circumstances eat from the same cooking pot. If the same qualifying family moved in with their best friend, the family could show that they do not pool their resources and receive food stamps under separate household status.

B. PLAINTIFFS AND THE FACTS

Natividad Castillo's was the first of the four consolidated civil cases filed. Mr. Castillo and his family obtained a restraining order against the Defendants. As it became necessary, new Plaintiffs either filed similar lawsuits or were added as Plaintiffs to one of the four lawsuits challenging 7 U.S.C. 2012 (i). On opposed motions, the Plaintiffs obtained restraining orders against the Defendants. Uncontested evidence clearly shows the

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1. 7 U.S.C. 2014(a), (g) income and resources of one family are deemed to the other, if one family has a car with a fair market value of $6000.00 dollars the household does not receive any food stamps. This happens regardless of whether the car is paid for or $4500.00 is still owed on that car.

Plaintiffs established that they were entitled to separate household status but had they not been related, there would have been no problem. Because they were related, Defendants were prohibited from treating the Plaintiffs as separate households.

On October 7, 1981, Natividad Castillo and his family filed suit in Federal Court challenging the amendments to 7 U.S.C. 2012 that prevented him from showing separate household status from his wife's daughter from a previous marriage, Teresa Berrera. Plaintiff Castillo, with his wife, Petra, and their children, moved in with Petra's married daughter whose family was already receiving food stamps. The Castillos applied for food stamps in October of 1981. Their application was denied because the Castillos were not considered a separate household from their daughter's household. To compound the matter, the food stamp office would not increase the daughter's October food stamp allotment so that the Castillo's could receive some food stamps in October. Without the District Court's intervention, the Castillo family would have been without any food stamps in October and with a reduced food stamp allotment after October.

Plaintiff Blanca Martinez, the unemployed mother of nine-month-old Vanessa Marie Martinez, moved in with her parents, Joe and Sylvia Sanillano and their other two children. Mrs. Martinez's only income was a monthly welfare check for her daughter. The Santillano's only income was a monthly Social Secruity check; they did not receive food stamps. Blanca Martinez's application for food stamps was denied because she lived with her parents. Her mother, Mrs. Santillana, then applied for food stamps and received an allotment based on the Martinez's

and Santillano's income. The Santillano's income is not available to Blanca Martinez.

Plaintiff Sara Cortez, an unemployed mother of two children, received a welfare check of $117.00 monthly. She moved in with her parents and her parents' other two children. Her application for food stamps was denied because she lived with her parents. Her mother, Maria Trujillo Costales, then applied for food stamps and received a food stamp allotment based on the income of the Costales and the Cortez family.

Plaintiff Cecilia Villafranca, a woman with two children, received child support for one child and welfare benefits for the other. When her husband went into prison, she moved in with her brother. She and her family had been receiving food stamps through February, 1983. In March, 1983, her application for food stamps was denied because she lived with her brother and could not be considered a separate household. As a member of her brother's household she would not be eligible for food stamps because his family's income was attributed to her and her children, even though she had no access to this income.

Plaintiff Elias Ruiz, the unemployed father of two children, applied for food stamps when his wife was injured and hospitalized. They had been living with his mother for about eight months prior to Mrs. Ruiz's injury and hospitalization. His food stamp application was denied because his household was not considered separate from his mother. His mother's limited resources were not available to him and his family.

Plaintiff Robert Cody and his wife Jerry Cody are unemployed migrant farmworkers and parents of two

children. They moved in with Robert Cody's mother, Emma Lee Cody, and her other five children. Emma Lee Cody was unemployed and received food stamps for her family. Jerry Cody applied for food stamps on January 4, 1982 but her application was denied because her household was not considered separate from that of her mother-in-law's. The food stamp office refused to increase Emma Lee Cody's food stamp allotment so that Jerry Cody and her family could receive some food stamp benefits in January.

Sylvia Nieto is the mother of one child. Their only income is a monthly check for disability benefits of $176.44. She and her son had been receiving food stamp benefits as a household separate from her parents for approximately eight months. On December 8, 1981, her application for food stamps was denied because they were no longer considered a separate household from her parents.

Plaintiff Gregorio Alvarado with his wife, Maria, and his three children, moved in with Mr. Alvarado's sister, Magdalena Tovar. Mr. Alvarado and his wife had been receiving food stamps as a separate household until they moved in with Mrs. Tovar. Mr. Alvarado applied for food stamps for May, 1983, and was denied because his household was not considered separate from his sister's. Mr. Alvarado's brother-in-law's income was not available to Mr. Alvarado and his family.

All of the Plaintiffs had to move in with a close relative because they had no other place to go. No public housing was available. Without the District Court's intervention the Plaintiffs would have either been completely deprived of food stamps or would have received reduced food stamps. The Castillo and Cody families would not

have had any food stamps for the month they first moved in with their relatives.

ARGUMENT

As stated above, the basis of this suit is the question whether the government can enforce a law which arbitrarily creates an irrebutable presumption that under all circumstances related individuals who are forced to move in with one another will always be able to share their resources as well as prepare food and eat together. The government has misunderstood the issue. The Plaintiffs here do not seek "the right to dine separately." (Jurisdictional Statement at 17). Whatever the surface logic of the statute or the government's brief, they ignore reality. The fact is that because of conditions beyond the control of many poor people such as health considerations, the facilities in a poverty-level kitchen and differing work schedules of families, there is no way that all resources can be comingled or food can be prepared and eaten together.

The challenged statute 7 U.S.C. 2012 (i) will cut expenditures and while the government may want to cut expenditures it cannot do so in the arbitrary manner chosen.

A. PLAINTIFFS' FREEDOM OF PERSONAL CHOICE ALLOWS THEM TO LIVE WITH THEIR CLOSE RELATIVES

Plaintiffs are poor adults with children of their own. They have lived on their own, but, due to dire circumstances, have been forced to move in with their close rela-

tives. Whether the decision to move was by choice or necessity, this Honorable Court has recognized that freedom of personal choice in matters of marriage and family life are protected by the Due Process Clause of the Fourteenth Amendment. *Moore v. Cleveland,* 431 U.S. 494, 505 (1977); *Cleveland Board of Education v. LaFleur,* 414 U.S. 632, 639-640 (1974). A host of cases, tracing their lineage to *Meyer v. Nebraska,* 262 U.S. 390, 399-401 (1923), and *Pierce v. Society of Sisters,* 268 U.S. 510, 534-535 (1925), have consistently acknowledged a "private realm of family life which the state cannot enter." *Prince v. Massachusetts,* 321 U.S. 158, 166 (1944). See, e.g., *Roe v. Wade,* 410 U.S. 113, 152-153 (1973); *Wisconsin v. Yoder,* 406 U.S. 205, 231-233 (1972); *Stanley v. Illinois,* 405 U.S. 645, 651 (1972); *Ginsberg v. New York,* 390 U.S. 629, 639 (1968); *Griswold v. Connecticut,* 381 U.S. 479 (1965); id., at 495-496 (Goldberg, J., concurring); id., at 502-503, 85 (White, J., concurring); *Poe v. Ullman,* 367 U.S. 497, 542-544, 549-533 (1961) (Harlan, J., dissenting); cf. *Loving v. Virginia,* 388 U.S. 1, 12 (1967); *May v. Anderson,* 345 U.S. 528, 533, Ops. 45, 67 (1953); *Skinner v. Oklahoma ex rel. Williamson,* 316 U.S. 535, 541 (1942). Clearly, Plaintiffs have the right to live with their close relatives. And as the district court found, where the government intrudes on choices concerning family living arrangements, "this Court must examine carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation." *Moore* at 499. The stricter standard of review declared by *Moore* is applicable here. *Id.* The government's substantial state interest must outweigh the harm to the Plaintiffs. Instead of the absolute presumption imposed on them, Congress could have set up exceptions for situations where

individuals living together would be very likely to have separate households under the same roof. These situations could include individuals who have health problems, who work different shifts, or have separate facilities or utensils out of necessity.

B. 7 U.S.C. 2012 (i) INTERFERES WITH PLAINTIFFS' RIGHT TO LIVE TOGETHER. THE HARM DONE TO PLAINTIFFS OUTWEIGHS THE STATE'S INTEREST.

The United States Department of Agriculture (U.S.D.A.) contends that 7 U.S.C. 2012 (i) is necessary to eliminate fraud and abuse in the food stamp program.[2] There is no evidence in the legislative history, nor is there evidence in the record to show that related individuals are more likely to commit fraud than unrelated individuals living together. There is only suspicion that individuals such the the Plaintiffs are more likely to commit fraud than unrelated individuals in the same circumstances. *The Plaintiffs have not been accused of fraud!* Indeed the government did not controvert the affidavits stating the Plaintiffs are bona fide separate households.

The majority of the Plaintiffs are married and/or have children. With only one exception, each of them has lived separately from the relatives with whom they now live. Plaintiffs do not live with these relatives by choice. This Court recognized that "the [marriage] event not

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2. A reading of the testimony of food stamp fraud investigators in the 1981 hearings. S. Rep. 97-128 97th Cong. 1st Sess. (1981) does not show evidence other than suspicion that family members living together would be more likely to defraud the government by obtaining separate household status when living as one household.

only creates a new family with attendant new responsibilities but also modifies the pre-existing relationships between the bride and groom and their respective families.'' *Califano v. Jobst,* 434 U.S. 47, 53 (1977). After having lived separately and taking care of their families, the adult Plaintiffs and the children suffer from reduced food because they now live with relatives and they are unable to control how the food stamps they receive are spent. The food stamps are issued to one individual only. 7 C.F.R. 273.1 (d). The adult who is not deemed head of the household will suffer because he/she is unable to choose food for his/her children. By preventing these adults from independently obtaining and preparing their food, the government promotes dependence of the extended family on the nuclear family.

Plaintiffs have other problems that are aggravated by the presumption that they and their relatives share resources and always will be able to prepare food and eat together. The link between poverty and illness is well established. The poor are much more likely to have such problems as tuberculosis and hepatitis, which would necessarily require separate preparation of food. An individual with a highly contagious disease such as tuberculosis or hepatitis would infect the rest of the individuals living in the house if his/her food and cooking utensils were mixed with the utensils used by the rest of the family. The poor suffer from disease more than any other segment of the population.[3] Diseases such as diabetes, gall

3. Reutilinger, S., and Selowsky, M., Malnutrition and Poverty, Magnitude and Policy Options, at 1, 1976. Caliendo, M., Nutrition and Preventive Health Care, at 148, 156,

(Continued on following page)

bladder problems, sickle-cell anemia, liver disease, heart problems, diarrhea, chronic inflamatory bowel disease, and hypertension require special diets. Everyone living in the house is then forced into the diet required by these diseases. If anything, this causes the diet to cost more rather than less. Also, the cooking and dining facilities of the poor are likely to be small, making it less likely that a large group of people would be able to prepare and eat their food together. Lack of food causes malnutrition and causes more disease yet the government is cutting food stamps and health care for the poor.[4]

Even if the government does not interfere with the Plaintiff's right to live with closely related individuals, this Court should look at the deprivation of food with heightened scrutiny. *Plyler v. Doe,* 457 U.S. 202 (1982). *Plyler* involved a statute that denied undocumented alien children a public education. Reiterating that education is not a fundamental right, the Court still applied a heightened scrutiny and decided that the denial of an education to these children did not further a substantial goal of the State. *Id.* The Court also said that education was not

(Continued from previous page)

176, 177, 345, 1981. Wynick, M., Nutrition in Health and Disease, at 4, 21, 1985. Puri, S., and Chandra, R., Nutritional Regulation of Host Resistence and Predictive Value of Immunologic Tests in Assessment of Outcome, The Pediatric Clinics of North America, Vol. 32, No. 2 at 501. April 1985. Mundinger, M., The New England Journal of Medicine, Vol. 313, No. 1 at 45, 46, July 4, 1985. Flores, J., Mexican Americans Health Professions Policy Study at 104, 105, 106, 1984.

4. New England Journel of Medicine, Mundinger, M., Vol. 313 No. 1 at 44, 45, July 4, 1985 at 44, 45.

merely some form of governmental "benefit" indistinguishable from other forms of welfare benefits. *Id.* Admittedly, food stamps are a benefit derived from social welfare legislation, but food stamps are of utmost importance to the recipients because food is basic to life itself. Without food, an education, or any other benefit becomes unnecessary. Seventy five to eighty percent of food stamp expenditures go to families with children.[5] Children are major recipients of food stamps. They "now comprise 26.8% of the United States population, but 39.2% of all poor people."[6] Government spending on children and families, especially those with low-incomes, has recently declined and under current policies will continue to fall.[7] Any individual deprived of food will be hurt by hunger and malnutrition. The children who are hurt by this hunger and malnutrition are in the same situation as the children in *Plyler*, for they can affect neither their parents' conduct nor their own "status". *Id.* at 220. Denying these children an adequate diet will reduce the government's cost of the food stamp program but surely the

5. Children, Youth, and Families: Beginning the Assessment. Hearing Before The Select Committee On Children, Youth, And Families, House of Representatives Ninety-Eighth Congress First Session, Hearing Held In Washington, D.C. on Aprii 28, 1983, at 16. Printed for the use of the Select Committee on Children, Youth, and Families.

6. Henry, M., Youth Law News, Journal of the National Center for Youth Law, Vol. VI No. 4 at 12, July-August 1985.

7. Children, Youth, and Families: Beginning the assessment. Hearing Before The Select Committee On Children, Youth, And Families House of Representatives Ninety-Eighth Congress First Session, Hearing Held In Washington, D.C. on April 28, 1983 at 56. Printed for the use of the Select Committee on Children, Youth, and Families. Statement of Harold Richman and Hermon Dunlop.

government's interest in cutting costs does not outweigh the Plaintiffs' interest in food.

CONCLUSION

The irrebutable presumption about the Plaintiffs and all other individuals in the same situation invidiously discriminates against them. The necessity of living together should not result in the sacrifice of food. For the reasons stated above, this appeal should be dismissed or the Federal District Court's order should be affirmed.

Respectfully submitted,

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REPLY

BRIEF

Supreme Court, U.S.
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No. 85-250

In the Supreme Court of the United States

OCTOBER TERM, 1985

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, APPELLANT

v.

NATIVIDAD CASTILLO, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

REPLY MEMORANDUM FOR THE APPELLANT

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In the Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-250

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, APPELLANT

v.

NATIVIDAD CASTILLO, ET AL.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF TEXAS

REPLY MEMORANDUM FOR THE APPELLANT

In our jurisdictional statement, we explained that the district court erred in declaring that equal protection principles render Section 3(i) of the Food Stamp Act of 1964, 7 U.S.C. 2012(i), unconstitutional as applied to appellees. We demonstrated that the court improperly employed "heightened scrutiny" to a concededly rational statutory provision that treats parents, children, and siblings who live together as a single "household" for food stamp entitlement purposes. Appellees' motion to dismiss or affirm has failed to overcome our showing that the district court erred and that the question presented is substantial.

1. Appellees defend the district court's application of heightened scrutiny by citing cases (Mot. to Dis. 8) recognizing that certain basic decisions concerning the composition of the family unit do enjoy a constitutionally protected status. See, *e.g.*, *Moore* v. *City of East Cleveland*, 431 U.S. 494 (1977); *Cleveland Board of Education* v. *LaFleur*, 414

U.S. 632 (1974). As we have shown (J.S. 15-19), those cases are inapposite. Section 2012(i) does not have a direct or substantial impact on basic family living arrangements; instead, it simply imposes a carefully crafted and reasonable limitation on the distribution of food stamp benefits. Section 2012(i), which treats closely related persons as a single household for food stamp entitlement purposes, employs a rational classification to prevent a common method of beneficiary fraud. Under these circumstances, there is no occasion for heightened scrutiny. See, *e.g.*, *Zablocki* v. *Redhail*, 434 U.S. 374, 386-387 (1978); *Califano* v. *Jobst*, 434 U.S. 47, 58 (1977).

Appellees also rely on this Court's decision in *Plyler* v. *Doe*, 457 U.S. 202 (1982), to justify heightened scrutiny (Mot. to Dis. 11-12). That case is likewise inapposite. *Plyler* addressed a state statute that completely denied a public education to the children of undocumented aliens. This Court noted that the case raised unique concerns because "denial of education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit." 457 U.S. at 221-222. The Court also observed that public education is not "some governmental 'benefit' indistinguishable from other forms of social welfare legislation." *Id.* at 221. The present case, by contrast, involves a congressional determination that the Food Stamp program, and its millions of beneficiaries, would benefit from prophylactic rules to prevent fraudulent claims. Section 2012(i)'s definition of "household" for food stamp entitlement purposes represents a legitimate classification designed to preserve the integrity of a social welfare program. Classifications of this type, familiar to all social welfare programs, are not subject to heightened scrutiny. See, *e.g.*, *Weinberger* v. *Salfi*, 422 U.S. 749, 776-777 (1975). See also *Plyler*, 457 U.S. at 216.

2. Appellees' intimation (Mot. to Dis. 7, 8, 13) that Section 2012(i) creates an unconstitutional irrebuttable presumption is equally insubstantial. Section 2012(i) is not an evidentiary presumption; rather, it is a legitimate legislative classification. See *Salfi*, 422 U.S. at 771-772. Section 2012(i) "does not purport to speak in terms of the bona fides" of the family members' household status and "then make plainly relevant evidence of such bona fides inadmissible." 422 U.S. at 772. Instead, it provides that "benefits * * * are available upon compliance with an objective criterion, one which the Legislature considered to bear a sufficiently close nexus with underlying policy objectives to be used as the test for eligibility." *Ibid.*

3. Appellees urge dismissal or affirmance largely on the ground that the district court's decision is correct as a matter of enlightened social policy (Mot. To Dis. 10-13). However, the courts "do not sit to pass on policy or the wisdom of the course Congress has set." *Heckler* v. *Turner*, No. 83-1097 (Feb. 27, 1985), slip op. 27. The sole legal question in this case is whether Section 2012(i) is rationally related to a legitimate legislative objective. The district court itself conceded the rationality of the statute, and appellees have presented no plausible argument to the contrary.

For the foregoing reasons, and for the reasons set forth in the jurisdictional statement, probable jurisdiction should be noted.*

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*We reiterate our suggestion that summary reversal would be appropriate in this case. We note that the United States District Court for the Eastern District of New York has rejected a similar challenge to the constitutionality of Section 2012(i). See *Steinberg* v. *United States Dep't of Agriculture*, 613 F. Supp. 432 (1984), aff'd, No. 85-6028 (2d Cir. July 16, 1985) (unpublished order), petition for cert. pending, No. 85-5624 (filed Oct. 10, 1985).

Respectfully submitted.

CHARLES FRIED
Solicitor General

NOVEMBER 1985

JOINT

APPENDIX

(4)

No. 85-250

Supreme Court, U.S.
FILED
JAN 2 1986
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1985

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, APPELLANT

v.

NATIVIDAD CASTILLO, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

JOINT APPENDIX

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JURISDICTIONAL STATEMENT FILED AUGUST 14, 1985
PROBABLE JURISDICTION NOTED NOVEMBER 18, 1985

BEST AVAILABLE COPY

59p

In the Supreme Court of the United States

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JOINT APPENDIX

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UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

NATIVIDAD CASTILLO, ET AL.

v.

JOHN BLOCK, ET AL.

Civil Action No. B-81-260

Chronological List of Relevant Docket Entries

DATE	NR	PROCEEDINGS
10/7/81	1	Pltfs' COMPLAINT, filed, oha
10/7/81	2	Pltfs' APPLICATION FOR TEMPORARY RESTRAINING ORDER, filed. oha
10/7/81	3	Pltfs' MEMORANDUM IN SUPPORT OF MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION, filed. oha
10/7/81	4	Pltfs' MOTION FOR PRELIMINARY INJUNCTION, filed. oha
10/7/81	5	Pltfs' CERTIFICATE OF EFFORTS OF ATTORNEY TO GIVE NOTICE TO DEFT U.S. ATTORNEY GENERAL OF APPLICATION FOR TEMPORARY RESTRAINING ORDER, filed. oha
10/9/81	7	(FBV) TEMPORARY RESTRAINING ORDER, filed. oha Pltfs' Motion for Preliminary Injunction set for hearing on Oct. 16, 1981. Bond for Temporary Restraining Order is set at $7.
10/19/81	10	Pltfs' FIRST AMENDED COMPLAINT—adding pltf—John Block, filed. oha

DATE	NR	PROCEEDINGS
10/19/81	11	Pltfs' MOTION FOR CLASS CERTIFICATION, filed. oha M/D 11/2/81
10/22/81	12	Pltfs' MEMORANDUM IN SUPPORT OF MOTION FOR CLASS CERTIFICATION, filed. oha
10/30/81	13	JOINT MOTION FOR EXTENSION OF TEMPORARY RESTRAINING ORDER, filed. oha M/D 11/2/81
11/13/81	14	State Defts, Johnston & Campos', ORIGINAL ANSWER, filed. oha DD 11/16/81
11/19/81	15	State Defts' MEMORANDUM IN OPPOSITION TO PLTFS' MOTION FOR INJUNCTIVE RELIEF, filed. oha
12/1/81	16	Pltfs' MOTION FOR SUMMARY JUDGMENT, filed. oha M/D 12/28/81
12/1/81	17	Pltfs' MEMORANDUM IN SUPPORT OF MOTION FOR A PRELIMINARY OR PERMANENT INJUNCTION AND IN THE ALTERNATIVE SUMMARY JUDGMENT, filed. oha
12/1/81	18	Pltfs' MOTION TO AMEND THE COMPLAINT, filed. oha M/D 12/28/81
12/1/81	19	Pltfs' MEMORANDUM IN SUPPORT OF MOTION TO AMEND COMPLAINT, filed. oha
12/1/81	20	Pltfs' RESPONSE TO STATE DEFTS' MEMORANDUM IN OPPOSITION TO PLTS MOTION FOR INJUNCTIVE RELIEF, filed. oha
12/14/81	21	State Defts' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO PLTFS' MOTION FOR INJUNCTIVE RELIEF, filed. oha

DATE	NR	PROCEEDINGS
1/14/82	23	Deft Secretary of U.S. Department of Agriculture, JOHN R. BLOCK'S ANSWER, filed. oha
1/21/82	24	AFFIDAVIT of ALFONSO SALINAS, filed. oha DD 1/25/82
1/26/82	25	Deft U.S. Department of Agriculture's MOTION TO CONSOLIDATE, filed Unopposed. oha M/D 2/1/82
2/1/82	26	Deft U.S. Department of Agriculture's MOTION TO CONSOLIDATE, filed Unopposed. oha
2/2/82	27	(FBV) ORDER, filed. Parties Ntfd. oha Motion to Consolidate GRANTED. Case Consolidated with C.A. B-82-7 and B-82-21, to be carried under C.A. B-81-260
2/2/82	28	(FBV) ORDER, filed. Parties Ntfd. oha Temporary Restraining Order continued until Feb. 24, 1982. All parties waived hearing for Preliminary Injunction and will submit briefs in support & opposition to the Preliminary Injunction by Feb. 16, 1982.
2/9/82	29	Deft United States' MOTION FOR SUMMARY JUDGMENT w/MEMORANDUM, filed oha M/D 3/1/82
2/19/82	33	SUPPLEMENTAL MEMORANDUM AND AFFIDAVITS, filed. DD 2/19/82 mer
3/10/82	34	SUPPLEMENTAL LEGAL MEMORANDUM IN SUPPORT OF Defts' MOTION FOR SUMMARY JUDGMENT, filed. DD 3/12/82 mer
3/10/82	35	ANSWER of Deft. Secretary of the U.S. Dept. of Agriculture, filed. DD 3/12/82 mer

DATE	NR	PROCEEDINGS
3/16/82	37	ANSWER OF Deft. Secretary of the U.S. Dept. of Agriculture, filed. DD 3/18/82 mer
10/28/82	39	PLAINTIFFS' MOTION TO AMEND THE COMPLAINT AND TO JOIN PARTY PLAINTIFFS, filed. Dkt'd 10/28/82 mer
10/28/82	40	MEMORANDUM IN SUPPORT OF MOTION TO AMEND COMPLAINT AND TO JOIN PARTY PLAINTIFFS, filed. Dkt'd 10/28/82 mer
10/28/82	41	MOTION FOR PRELIMINARY INJUNCTION, filed. Dkt'd 10/28/82 mer
10/28/82	42	APPLICATION FOR TEMPORARY RESTRAINING ORDER, filed. Dkt'd 10/28/82
10/28/82	43	AFFIDAVIT OF BLANCA MARTINEZ, filed. Dkt'd 10/28/82 mer
10/28/82	44	AFFIDAVIT OF SARA CORTEZ, filed. Dkt'd 10/28/82 mer
10/28/82	45	(FBV) ORDER GRANTING LEAVE TO AMEND AND TO JOIN PARTY PLAINTIFFS, filed. Dkt'd 10/29/82 mer
10/28/82	46	PLAINTIFFS' THIRD AMENDED COMPLAINT, filed. Dkt'd 10/29/82 mer
10/28/82	47	(FBV) TEMPORARY RESTRAINING ORDER, filed. Ordered that Defts. Block, Johnston and Campos and those acting in concert with them are hereby restrained from refusing to certify Plfts. Blanca Martinez and Sara Cortez families on any other criteria other than their actual current income taking into consideration the number of persons in the family. Dkt'd 10/29/82 mer

DATE	NR	PROCEEDINGS
11/12/84	48	UNDERTAKING FOR TEMPORARY RESTRAINING ORDER, filed. lsg Dkt'd 11/15/82
1/8/83	50	CROSS MOTION FOR SUMMARY JUDGMENT AND IN THE ALTERNATIVE JOINING WITH CONSOLIDATED PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, filed. M/D 4/25/83 Dkt'd 4/12/83 mer
2/28/84	51	PLAINTIFFS' MOTION AMEND THE COMPLAINT AND TO JOIN PARTY PLAINTIFFS, filed. Dkt'd 2/28/84 mer
2/28/84	52	APPLICATION FOR TEMPORARY RESTRAINING ORDER, filed. Dkt'd 2/28/84 mer
2/28/84	54	AFFIDAVIT OF ELIAS RUIZ, filed. Dkt'd 2/28/84 mer
2/28/84	55	MEMORANDUM IN SUPPORT OF MOTION TO AMEND COMPLAINT AND TO JOIN PARTY PLAINTIFFS, filed. Dkt'd 2/28/84 mer
3/6/84	57	MOTION TO AMEND THE COMPLAINT AND TO JOIN PARTY PLAINTIFFS, filed. Dkt'd 3/9/84 mer
3/6/84	58	APPLICATION FOR TEMPORARY RESTRAINING ORDER, filed. Dkt'd 3/9/84 mer
3/7/84	59	(FBV) ORDER GRANTING LEAVE TO AMEND AND TO JOIN PARTY PLAINTIFFS, filed. ORDERED that the Plaintiff be, and are hereby given

DATE	NR	PROCEEDINGS
		leave to file an amended complaint and to join party Plaintiffs. Dkt'd 3/9/84 mer
3/7/84	60	(FBV) TEMPORARY RESTRAINING ORDER, filed. ORDERED that Defts. Block, Johnson and Campos and those acting in concert with them are hereby restrained from refusing to certify Plaintiff's Elias Ruiz family on any other criteria other than their actual current income taking into consideration the number of person in the family. This Temporary Restraining Order shall remain in effect until such time as either party requests a hearing for Preliminary Injunction. Dkt'd 3/9/84 mer
3/7/84	61	PLAINTIFFS' FOURTH AMENDED COMPLAINT, filed. Dkt'd 3/9/84 mer
3/12/84	62	UNDERTAKING FOR TEMPORARY RESTRAINING ORDER, filed. Dkt'd 3/15/84 mer
5/16/84		Notice mailed that case is set for FPT on May 31, 1984 at 1:30 p.m. before Judge Filemon B. Vela, if jury requested J/D on 6/1/84 at 1:30 p.m. Dkt'd 5/22/84 mer
5/30/84	63	DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, filed. Dkt'd 5/30/84 mer
5/31/84	64	(FBV) FINAL PRE-TRIAL MINUTES, filed. Ct. Rptr. Bill Holloway/el Appearances: Crisanta Guerra f/plft. Kevin O'Hanlon, Javier Aguilar f/defts.

DATE	NR	PROCEEDINGS
		Court gives both sides to file briefs [sic] on Summary Judgment Motions, also possible consolidation with C.A.B-83-106. Dkt'd 6/4/84 mer
6/18/84	65	Plft's MOTION TO AMEND THE COMPLAINT AND TO JOIN PARTY PLAINTIFFS, filed. M/D 7/9/84 Dkt'd 6/20/84 mer
6/19/84	66	RESPONSE OF THE TEXAS DEPARTMENT OF HUMAN RESOURCES TO CROSS MOTIONS FOR SUMMARY JUDGMENT, filed. Dkt'd 6/20/84 mer
9/27/84	67	UNOPPOSED MOTION TO CONSOLIDATE, FILED. Dkt'd. 10/2/84 ltg FORWARDED TO ED. LEANDRO
10/4/84	68	(FBV) ORDER, FILED. CONSOLIDATION OF THIS CASE WITH C.A. B-83-106, 82-21, 82-7 and 81-260. CC TO ALL COUNSEL. Dkt't 10/4/84 ltg
10/10/84	69	PLTFS' SUPPLEMENT TO THEIR MOTION FOR SUMMARY JUDGMENT AND SUPPLEMENTAL RESPONSE IN OPPOSITION TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT, FILED. Dkt'd 10/16/84 ltg
1/25/85	70	DEFTS (EMPLOYEES OF TDHR), MOTION FOR SUMMARY JUDGMENT, FILED. M/D 2/11/85 Dkt'd 1/29/85 ltg
3/1/85	71	PLTFS' RESPONSE TO DEFTS' MOTION FOR SUMMARY JUDGMENT, FILED. Dkt'd 3/1/85 ltg

DATE	NR	PROCEEDINGS
4/23/85	72	(FBV) MEMORANDUM AND ORDER, filed. All parties notified. gc Pltf's bring this action seeking to invalidate amendments to the Food Stamp Program. It is ORDERED that the Defendants are hereby permanently enjoined from enforcing, as to the present Plaintiffs, that part of 7 U.S.C. 2012(i) which states, "that parents and children, or siblings, who live together shall be treated as a group of individuals who customarily purchase and prepare meals together for home consumption even if they do not do so." Dkt'd 4/24/85 gc
4/23/85	73	(FBV) SUPPLEMENTAL MEMORANDUM, filed. All parties notified. gc Ordered that State Defendants' Motion to Dismiss be in all things DENIED. Dkt'd 4/24/85 gc
5/6/85	76	Pltf's BILL OF COSTS, filed. Dkt'd 5/10/85 gc
5/17/85	79	Deft's, JOHN BLOCK, in his capacity as Secretary of the United States Department of Agriculture, NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES, filed. Dkt'd 5/20/85 gc

SYLVIA NIETO, ET AL.

v.

JOHN BLOCK, ET AL.

Civil Action No. B-82-7

Chronological List of Relevant Docket Entries

DATE	NR	PROCEEDINGS
1/11/82	1	Pltfs' COMPLAINT, filed. oha
1/11/82	2	Pltfs' AFFIDAVIT of Sylvia Nieto, filed. oha
1/11/82	5	Pltfs' AFFIDAVIT OF MARIA NORMA MARTINEZ, filed. oha
1/11/82	6	Pltfs' APPLICATION FOR A TEMPORARY RESTRAINING ORDER, filed. oha
1/11/82	7	Pltfs' MEMORANDUM IN SUPPORT OF MOTION FOR A TEMPORARY RESTRAINING ORDER, filed. oha
1/11/82	8	Pltfs' MOTION FOR CLASS CERTIFICATION, filed. oha
1/11/82	9	Pltfs' MEMORANDUM IN SUPPORT OF MOTION FOR CLASS CERTIFICATION, filed. oha
1/12/82	11	(JDA) TEMPORARY RESTRAINING ORDER, filed. oha DD 1/13/82 ORDERED that Defts Block, Johnston, and Cervantes and those acting in concert with them are hereby RESTRAINED from refusing to certify the Pltf Nieto family on the basis of 7 C.F.R. 273.1(a)(2)(ii) (Household concept), as published in 46 Fed. Reg. 44,722 (Sept. 4, 1981). Pltfs' Motion for Preliminary Injunction set for hearing on Jan. 22, 1982 at 9:30 A.M.

DATE	NR	PROCEEDINGS
		This Order shall expire at 12 p.m., on Jan. 22, 1982, unless before such time this Order is extended for good cause or by agreement of the Parties. Bond for this TRO is set at $10.00. Parties Ntfd.
1/26/82	15	Deft U.S. Department of Agriculture's MOTION TO CONSOLIDATE, filed. Unopposed. oha M/D 2/1/82
2/1/82	16	Pltfs' FIRST AMENDED COMPLAINT, filed. oha
2/1/82	17	JOINT MOTION FOR EXTENSION OF TEMPORARY RESTRAINING ORDER, filed. oha
2/1/82	18	Deft U.S. Department of Agriculture's MOTION TO CONSOLIDATE, Unopposed. oha
2/2/82	19	(FBV) ORDER, filed. Parties Ntfd. oha Case CONSOLIDATED with C. A. B-81-260 and C. A. B-82-21 ALL FUTURE ENTRIES TO BE CARRIED UNDER C. A. B-81-260.
10/4/84	20	C. A. B-83-106 HAS BEEN CONSOLIDATED WITH THIS CASE AND WITH B-82-21 AND B-81-260. Dkt'd 10/4/84 ltg

ROBERT CODY, ET AL.

v.

JOHN BLOCK, ET AL.

Civil Action No. B-82-21

Chronological List of Relevant Docket Entries

DATE	NR	PROCEEDINGS
1/26/82	1	COMPLAINT, filed.
1/26/82	3	MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER, filed.
1/26/82	4	AFFIDAVIT of Robert Cody, filed.
1/26/82	5	AFFIDAVIT of Jerry Cody, filed.
1/26/82	6	MOTION FOR A PRELIMINARY INJUNCTION, filed.
1/26/82	9	APPLICATION FOR A TEMPORARY RESTRAINING ORDER, filed.
1/27/82	10	(FBV) TEMPORARY RESTRAINING ORDER, filed. Motion for Preliminary Injunction is set for hearing at 1:30 p.m. the 2nd day of February, 1982. mer
2/1/82	12	JOINT MOTION FOR EXTENSION OF TEMPORARY RESTRAINING ORDER, filed. M/D 2/8/82 mer
2/2/82	13	MOTION TO CONSOLIDATE, filed. mer
2/2/82	14	(FBV) ORDER, filed. Motion to Consolidate is not opposed and ordered that captioned actions be and are hereby consolidated. mer ALL FUTURE ENTRIES ON B-81-260
10/4/84	18	C.A. B-83-106 HAS BEEN CONSOLIDATED WITH THIS CASE AND ALSO B-82-7 AND B-81-260. Dkt'd 10/4/84 ltg

CECILIA VILLAFRANCA, ET AL.

v.

JOHN BLOCK, ET AL.

Civil Action No. B-83-106

Chronological List of Relevant Docket Entries

DATE	NR	PROCEEDINGS
4/15/83	1	COMPLAINT, filed.
4/15/83	2	APPLICATION FOR TEMPORARY RESTRAINING ORDER, filed.
4/15/83	3	MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION, filed.
4/15/83	4	AFFIDAVIT OF CECILIA VILLAFRANCA, filed.
4/15/83	5	MOTION FOR PRELIMINARY INJUNCTION, filed.
4/15/83	6	PLAINTIFFS' MOTION FOR CLASS CERTIFICATION, filed.
4/15/83	7	MEMORANDUM IN SUPPORT OF MOTION FOR CLASS CERTIFICATION, filed.
4/15/83	10	(FBV) TEMPORARY RESTRAINING ORDER, filed. ORDERED that Defts. BLOCK, JOHNSTON and CAMPOS and those acting in concert with them are hereby restrained from refusing to certify the Plft. Villafranca family on any criteria other than their actual current income taking into consideration the number of persons in the family. Dkt'd 4/18/83 mer
5/11/83	12	Deft's MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT, PLEA TO THE JURISDICTION, PLEA IN ABATEMENT, OPPOSITION TO CLASS CERTIFICATION, ORIGINAL ANSWER, filed. M/D 5/23/83 Dkt'd 5/12/83 mer
5/11/83	13	AFFIDAVIT of CRISANTA GUERRA, filed. Dkt'd 5/12/83 mer
5/13/83	15	(FBV) DOCKET CONTROL LETTER, filed. (1) All discovery to be completed by August 16, 1983. Additional time for an extension must be filed by July 16, 1983. (2) All other motions, including joinder of parties, must be filed no later than 10 days after the date of completion of discovery. (3) A pre-trial conference is set for September 2, 1983 at 9:30 a.m. before the Honorable William M. Mallet in Brownsville, Texas. Dkt'd 5/20/83 mer
5/23/83	16	Plft's APPLICATION FOR TEMPORARY RESTRAINING ORDER, filed. Dkt'd 5/23/83 mer
5/23/83	17	AFFIDAVIT OF GREGORIO ALVARADO, filed. Dkt'd 5/23/83 mer
5/23/83	18	PLAINTIFFS' MOTION TO AMEND THE COMPLAINT AND TO JOIN PARTY PLAINTIFFS, filed. M/D 6/6/83 Dkt'd 5/23/83 mer
5/23/83	19	MEMORANDUM IN SUPPORT OF MOTION TO AMEND COMPLAINT AND TO JOIN PARTY PLAINTIFFS, filed. Dkt'd 5/23/83 mer
5/31/83	20	(FBV) ORDER GRANTING LEAVE TO AMEND AND TO JOIN PARTY

DATE	NR	PROCEEDINGS
		PLAINTIFF, filed. All Parties Ntfd. lsg
	21	PLAINTIFFS FIRST AMENDED COMPLAINT, filed. Dkt'd 6/1/83
6/1/83	22	(FBV) TEMPORARY RESTRAINING ORDER, filed. Copies given to Atty. Crisanta Guerra. lsg
6/3/83	23	UNDERTAKING FOR TEMPORARY RESTRAINING ORDER, filed. Dkt'd 6/10/83 mer
6/13/83	24	PLAINTIFFS RESPONSE TO DEFENDANTS MOTION TO DISMISS AND OR FOR SUMMARY JUDGMENT, filed. Dkt'd 6/17/83 mer
8/1/83	26	(FBV) ORDER, filed. All Parties Ntfd. lsg Re: Pltf's Motion for Extension of Discovery and Pre-Trial Conference, GRANTED. 1) Discovery to be completed by Oct. 16, 1983. If additional time is required for discovery a motion must be filed by Sept. 16, 1983. 2) All other motions including Joinder of Parties must be filed w/i 10 days after date of completion of discovery. 3) A Pre-Trial Conference set for Oct. 25, 1983 at 9:30 A.M. before W.M. Mallet. Dkt'd 8/3/83
10/25/83	27	(WMM) PRETRIAL CONFERENCE, filed. Appearances: Crisanta E. Guerra for Pltf. Cavin O'Hanlon & Marvin Maloney f/ Deft. No fact issues here. Motion for Sum. J. pending.

DATE	NR	PROCEEDINGS
		Pltf. will file Motion for Sum. J. Stipulations, briefs & all motions due by Jan. 25, 1984. mpl Dkt'd 10/26/83
1/25/84	28	PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, filed. Dkt'd 1/27/84 mer
1/25/84	29	PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, filed. Dkt'd 1/27/84 mer
6/15/84	30	DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, filed. M/D 7/2/84 Dkt'd 6/20/84 mer
10/4/84	32	CASE IS CONSOLIDATED WITH C.A. B-81-260. ALL FUTURE ENTRIES IN C.A. B-81-260. Dkt'd 10/4/84 ltg

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Civil Action No. 81-260

NATIVIDAD CASTILLO, FERNANDO SOSA, PETRA SOSA, FOR HERSELF AND AS NEXT FRIEND OF ROBERTO SOSA, SAUL SOSA, ROY SOSA, EDUARDO SOSA, CATALINA AND GRACIELA CASTILLO, MINORS; BLANCA MARTINEZ FOR HERSELF AND AS NEXT FRIEND OF VANESSA MARIE MARTINEZ, MINORS; SARA CORTEZ FOR HERSELF AND AS NEXT FRIEND OF PERLA RUBY CORTEZ AND SYLVIA CORTEZ, MINORS; ELIAS RUIZ AND BELINDA RUIZ FOR HERSELF AND AS NEXT FRIEND OF MARICELA RUIZ AND CINDY RUIZ, MINORS, PLAINTIFFS,

v.

JOHN BLOCK, IN HIS CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF AGRICULTURE; MARLIN JOHNSTON IN HIS CAPACITY AS DIRECTOR OF THE DEPARTMENT OF HUMAN RESOURCES; AND JOSE CAMPOS IN HIS CAPACITY AS THE PROGRAM DIRECTOR FOR THE BROWNSVILLE FOOD STAMPS OFFICE OF THE DEPARTMENT OF HUMAN RESOURCES, DEFENDANTS

PLAINTIFFS' FOURTH AMENDED COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiffs, are unemployed, destitute families that are eligible participants in the Federal Food Stamp Program. Defendants have refused to certify the SOSA family for food stamps because the SOSAS took up residence with an emancipated daughter and her family of four after the SOSAS returned from agricultural employment in Michi-

gan. The Defendants consider the two families to be one household and since the daughter's family was previously certified, the Defendants will not certify the SOSAS until November. Fourteen people are required to exist for a month on the food allotted for four persons. Similarly, Defendants have refused to certify Plaintiffs Cortez family, Martinez family and the Ruiz family as separate households for food stamp purposes. Such a rule and its interpretation deprive the Plaintiffs of rights, benefits, and services in violation of the Food Stamp Act of 1964 and the Fifth and Fourteenth Amendments to the United States Constitution.

JURISDICTION

2. Jurisdiction is conferred on the court by 28 U.S.C. § 1337 (Interstate Commerce); 28 U.S.C. § 1331 (Federal Question); and 28 U.S.C. 1343(3) (Civil Rights).

PLAINTIFFS

3. Plaintiffs NATIVIDAD CASTILLO, PETRA SOSA, FERNANDO SOSA, ROY SOSA, EDUARDO SOSA, CATALINA CASTILLO, NATIVIDAD CASTILLO, and GRACIELA CASTILLO are indigent migrant farm workers residing in Brownsville, Texas, who are eligible participants in the Food Stamp Program of 1964, 7 U.S.C. § 2011 *et seq.* Plaintiffs ROBERTO SOSA, SAUL SOSA, ROY SOSA, EDUARDO SOSA, CATALINA CASTILLO, NATIVIDAD CASTILLO, and GRACIELA CASTILLO are minors and this action is brought on their behalf by their mother and next friend, PETRA SOSA.

4. Plaintiff Blanca Martinez is an indigent unemployed resident of Brownsville, Texas who is an eligible participant in the Food Stamp Program of 1964, 7 U.S.C. § 2011 *et seq.* Plaintiff Vanessa Marie Martinez is a minor and this action is brought on her behalf by her mother and next friend, Blanca Martinez.

5. Plaintiff Sara Cortez is an indigent unemployed resident of Brownsville, Texas and is an eligible participant in the Food Stamp Program of 1964, 7 U.S.C. § 2011 *et seq.* Plaintiffs Perla Ruby Cortez and Sylvia Cortez are minors and this action is brought on their behalf by their mother and next friend, Sara Cortez.

6. Plaintiffs Elias Ruiz and Belinda Ruiz are indigent residents of Brownsville, Texas who are eligible participants in the Food Stamp Program of 1964, 7 U.S.C. § 2011 *et seq.* Plaintiffs Maricela Ruiz and Cindy Ruiz are minors and this action is brought on their behalf by their mother and next friend, Belinda Ruiz.

CLASS ACTION

7. The Plaintiffs bring this action under Rule 23(b)(2) F.R. Civ. P. on behalf of themselves and all other persons in Cameron County who have been or will be disqualified from certification for the Food Stamp Program because of the definition of household contained at 46 Fed. Reg. 44712, 44722 (1981) or who are disqualified because of the Defendants' interpretation of said definition as part of the regulation. Plaintiffs' class is definite but is so numerous that a joinder of all members of the class is impracticable. Plaintiffs present questions of law and fact which are so common to the class and Plaintiffs present claims which are typical of and include any claims affecting class members. Plaintiffs will fairly and adequately protect the interest of the class. Defendants have acted and refused to act on grounds applicable to the class members as a whole making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

DEFENDANTS

8. Defendant JOSE CAMPOS is the Program Director of the Brownsville Food Stamp Office and is in charge of administering the program and implementing the Food Stamp regulations.

9. Defendant MARLIN JOHNSTON is the Director of the Department of Human Resources and is charged with the duty to administer the food stamp program, 7 U.S.C. § 2011 *et seq.* and the regulations of the food and Nutrition Service promulgated thereunder, 46 Fed. Reg. 44712 (1981). He is further charged with the implementation of the Food Stamp Handbook (81-26), instructions issued by the U.S. Food and Nutrition Service to explain the Federal Register, and the Texas Regulations relating to the administration of the Food Stamp Program.

10. Defendant JOHN BLOCK is the Secretary of the United States Department of Agriculture and is responsible for the administration of the Food Stamp Program throughout the United States.

STATEMENT OF THE CASE

11. Plaintiffs Castillo and Sosa arrived in Brownsville on or about September 26, 1981 after working in farm labor in Michigan during the summer. Plaintiffs Castillo and Sosa spent most of their wages traveling to Brownsville. Plaintiffs Castillo and Sosa began living with Teresa Barrera, the oldest daughter of PETRA SOSA, upon arriving in Brownsville, because the Plaintiffs did not have sufficient resources to pay for separate housing. Teresa Barrera and her husband have two young children. They are unemployed and support their family on a small amount of food stamps and monthly welfare payments. Plaintiffs spent the remainder of their summer income for food during their first week in Brownsville. Plaintiffs Castillo and Sosa presently are without any income or employment.

12. PETRA SOSA applied for food coupons for her family on October 1, 1981 in the Brownsville food stamp office. Plaintiffs' application was denied because Plaintiffs were classified as belonging to the same household as Teresa Barrera under the definition contained in 46 Fed.

Reg. 44712, 44722 (Sept. 4, 1981). Exhibit A. The family of Teresa Barrera is not eligible for recertification until November. Plaintiffs Castillo and Sosa and the family of Teresa Barrera were not living as one economic unit for whom food is customarily purchased in common. Plaintiffs Castillo and Sosa were in need of and eligible for emergency food assistance at the time of Plaintiffs' application.

13. Plaintiff Blanca Martinez and Venessa Marie Martinez have lived at Martinez's parents' residence since August 1982, after Plaintiff Martinez separated from her husband. Plaintiff Martinez is residing there temporarily until she is able to obtain separate housing. In addition to Plaintiffs Blanca and Venessa Marie Martinez, the following individuals reside at this residence; Joe Santillana, Sylvia Santillana, and Pearl Santillana.

14. Plaintiff Blanca Martinez and Venessa Marie Martinez are a separate economic unit from the Santillana household. Plaintiff Martinez receives a monthly check from the Aid to Families With Dependent Children (AFDC) welfare Program. This income is not available to the Santillana family and the income received by the Santillana family is not available to Plaintiffs' Martinez. Plaintiff Blanca Martinez generally buys and prepares food separately from the Santillana household.

15. On or about August 16, 1982 Plaintiff Martinez applied for food stamps in the Brownsville food stamp office. Plaintiff Martinez requested expedited services since she was without any income. Plaintiff's Martinez application was denied because Plaintiff Martinez was classified as belonging to the same household as Joe and Sylvia Santillana. The Santillana household was not receiving food stamps at this time. Sylvia Santillana applied for food stamps on or about the last week of August and the Santillana family together with the Martinez family received $60.00 in food stamps on or about the third week of

September. Since there are six members in the artificial household created for food stamps purposes, Plaintiffs Blanca Martinez and Venessa Marie Martinez get $10.00 of food stamps each per month. Plaintiffs Blanca and Venessa Marie Martinez would receive $139.00 in food stamps if certified as a separate household.

16. Plaintiffs Sara Cortez, Perla Ruby Cortez and Sylvia Cortez moved into the residence of Roberto Costales and Maria Trujillo Costales on or about the last week of April after living at a separate residence for four years. Plaintiffs Cortez moved in temporarily because they were without income and without another place to live.

17. Plaintiff Sara Cortez, Perla Ruby Cortez and Sylvia Cortez are a separate economic unit from the Costales household. Plaintiff Sara Cortez receives $117.00 a month from the Aid to Families With Dependent Children welfare program. Plaintiff Cortez' income is not available to the Costales family and the income received by the Costales family is not available to Plaintiff Cortez. Plaintiff Cortez generally purchases and prepares food separately.

18. Plaintiff Sara Cortez applied for food stamps in the Brownsville food stamp office on or about the last week of April 1982. She requested expedited services because she was without income to purchase food. Her application was denied because she was living with her parents and therefore could not be considered a separate household. Maria Trujillo Costales applied for food stamps and is presently receiving $291.00 for seven individuals. Plaintiff Cortez would be entitled to receive $189.00 for her two children and herself if certified as a separate household.

19. Plaintiffs Elias Ruiz, Belinda Ruiz and their children have lived at the same address as Estela Ruiz since approximately August 1983. Estella Ruiz is the mother of Plaintiff Elias Ruiz. Plaintiffs moved into this residence after Plaintiff Elias Ruiz lost his job and the family was unable

to pay for shelter. Plaintiffs are residing at this residence temporarily until such time as Elias Ruiz can find suitable employment and can afford separate housing. The two families do not live as one economic unit for whom food is customarily purchased and prepared in common. Plaintiffs are without resources to purchase food.

20. Plaintiff Elias Ruiz applied for food stamps at the Brownsville office of the Texas Department of Human Resources. His application was not accepted because his family lives at the same residence of Estela Ruiz and therefore could not be considered a separate household. Plaintiff Elias Ruiz was not asked whether his family purchased and prepared food together with his mother's family. Plaintiffs Ruiz would otherwise qualify for food stamps if they did not live at the same residence as Estela Ruiz.

21. Defendants did not and will not issue food coupons or an ATP (authorization to Purchase) to Plaintiffs on the third working day following the date that the application was filed.

22. The federal regulations and the Defendants define household in a manner that assumes that all persons living in the house are members of a family unit for food stamp purposes and that all persons in the house have the resources to support one another. Under these regulations, Plaintiffs will not be eligible for certification for food stamps for at least 30 days after they apply.

23. The Department of Agriculture did not provide adequate notice and comment periods prior to the promulgation of the Food Stamp regulations published in 46 Fed. Reg. 44712. The Plaintiffs were not given an opportunity to comment on the regulations prior to their effective date.

24. If Plaintiffs are not issued food stamps immediately, they will suffer both physical and emotional injury in the form of malnutrition, illnesses associated with malnutrition, distress and psychological trauma and degradation.

FIRST CLAIM FOR RELIEF

25. By presuming that Plaintiffs are members of the same household as the related individuals residing at the same address, without considering income and need, Defendants have under color of state law denied Plaintiffs due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution for which injury Plaintiffs are entitled to redress under 42 U.S.C. § 1983.

SECOND CLAIM FOR RELIEF

26. By refusing to issue food coupons or an ATP to Plaintiffs on the third working day following the date Plaintiffs filed their application, Defendants, under color of state law, have denied Plaintiffs' rights, benefits, and services under the Food Stamp Act and its implementing regulations, 7 C.F.R. § 273.2(i)(3). This has caused Plaintiffs grave injuries for which they are entitled to redress under 42 U.S.C. § 1983.

THIRD CLAIM FOR RELIEF

27. By not allowing adequate notice and comment period prior to the effective date of the regulations, the Defendants violated the Administrative Procedure Act, 5 U.S.C. § 553(b)(c). By Defendants' deviation from the procedures set out in the Administrative Procedure Act, the Plaintiffs were denied the opportunity for effective participation in the rule making process and are entitled to judicial review under 5 U.S.C. § 702.

IRREPARABLE HARM

28. Defendants' actions, if not enjoined will cause Plaintiffs immediate and irreparable harm for which Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

A. Pending hearing on preliminary injunction grant a temporary restraining order directing Defendants to immediately issue food stamp benefits based upon Plaintiffs' current income level and family size.

B. Enter a preliminary injunction enjoining the Defendants and all other persons acting in concert with them from failing to provide expedited services within 3 days to eligible applicants; and from enforcing the household definition as provided in the First Claim For Relief.

C. Enter a declaratory judgment that Defendants' policies and practices of failing to provide expedited services within 3 days to eligible applicants and Defendants' enforcement of household definition which deprives eligible applicants to life necessities as set out in the First Claim For Relief violates Plaintiffs' rights under the Due Process clause of the Fifth and Fourteenth Amendments to the United States Constitution and the Food Stamp Act of 1964.

D. Enter a Permanent Injunction enjoining the Defendants, and all other persons acting in concert with them from failing to provide expedited services within 3 days to eligible applicants, and from enforcing the household definitions as set forth in the First Claim For Relief.

E. Enter a declaratory judgment that Defendants failed to follow the rulemaking procedures of the Administrative Procedure Act as set forth in the Third Claim For Relief.

F. Award such other relief as may be deemed just and equitable, including costs and reasonable attorney fees.

Respectfully submitted,

TEXAS RURAL LEGAL AID, INC.
833 West Price Road
Brownsville, Texas 78520
(512) 546-5558

By: /s/ CRISANTA GUERRA
Crisanta Guerra
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

NATIVIDAD CASTILLO, ET AL., PLAINTIFFS

v.

JOSE CAMPOS, ET AL., DEFENDANTS

STATE OF TEXAS
COUNTY OF CAMERON

AFFIDAVIT

BEFORE ME, the undersigned, a Notary Public in and for said County, State of Texas, on this day personally appeared PETRA SOSA, after being by me duly sworn, deposes and says:

1. My name is PETRA SOSA. I am the mother of Fernando Sosa, Roberto Sosa, Saul Sosa, Roy Sosa, Eduardo Sosa, Catalina Castillo, Graciela Castillo, and Natividad Castillo. I am the wife of Natividad Castillo. My family and I are migrant farm-workers. We arrived in Brownsville, Texas from Michigan on September 26, 1981.

2. My children and I received our last income in Michigan where we worked as farm laborers. All the members of my family are presently unemployed. We spent most of our wages earned in Michigan for expenses incurred in traveling to Brownsville. The remainder of our income was spent for food during the first week in Brownsville.

3. My family and I are living in the home of Teresa Barrera, my oldest daughter. We are living there because we do not have sufficient resources to live in separate housing. Teresa Barrera has two small children, is unemployed, and receives food stamps and welfare. My family and the family of Teresa Barrera are not living as one economic

unit. We do not combine our resources and we do not purchase food in common. My family and I are temporarily living with Teresa Barrera until we can afford separate housing.

4. I applied for food coupons on October 1, 1981 in the Brownsville Office. My application for food stamps was denied because my family was classified as belonging to the same household as the family of Teresa Barrera. Teresa Barrera applied during the last week of August for food coupons. She was certified for the months of September and October. She receives $233.00 of food coupons for her family of four. I was told my application could not be considered. The caseworker told me that Teresa Barrera would be issued supplemental food stamps in November because of the increase in the number of persons in the household. I told the food stamp office my family and I were in need of emergency food stamps. I was told I could not receive emergency food stamps. I was not asked any questions as to whether my family and the family of Teresa Barrera combined our resources, shared expenses, or purchased food together.

5. My family and I do not have any money to buy food. We do not have any assets except for a 1978 Dodge. If we do not receive food coupons for this month, Natividad Castillo, my eight children, and I will not be able to eat properly.

6. On Monday, October 5, 1981, I was given Twenty Dollars ($20.00) by Catholic Charities but this will not last long for ten people.

7. The facts contained in paragraphs 1-6 above have been explained to me in Spanish and they are true and correct to my own knowledge.

/s/ PETRA SOSA
Petra Sosa

SUBSCRIBED AND SWORN to before me on this the 7th of October, 1981.

/s/ TOMANITA PAREDES
Notary Public in and for
The State of Texas

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

NATIVIDAD CASTILLO, ET AL., PLAINTIFFS

v.

JOSE CAMPOS, ET AL., DEFENDANTS

STATE OF TEXAS
COUNTY OF CAMERON

AFFIDAVIT

BEFORE ME, the undersigned, a Notary Public in and for said County, State of Texas, on this day personally appeared CRISANTA GUERRA, after being by me duly sworn, deposes and says:

1. My name is CRISANTA GUERRA. I was contacted by Petra Sosa on October 2, 1981 concerning the denial of her food stamp application by the Brownsville Food Stamp Office. She told me that her application had not been considered because her daughter, Teresa Barrera, was already certified to receive food coupons in October. Petra Sosa and her family are living in the home of Teresa Barrera and her family.

2. I called Jose Campos, the Director of the Food Stamp Program in Brownsville, on October 2, 1981. I asked him why Petra Sosa's application was not considered and why she was not given expedited services since her family appeared to be qualified for emergency food stamps. Jose Campos stated that the Sosa family could not be considered a separate household under the federal regulations which became effective October 1, 1981. He stated that a separate household status could not be given to parents and children who live together. Since Petra Sosa's family

was living with Teresa Barrera, who had been certified to receive food coupons for the month of September and October, the Sosa family was considered to be a part of the Barrera household.

3. I was further told that Petra Sosa was not eligible for expedited emergency services since her application could not be considered separately. Jose Campos told me that Petra Sosa would not receive any food stamps in the month of October. He stated that Teresa Barrera's allotment for November would be increased to reflect the change in the number of persons in her household.

4. I talked to Jose Campos on October 3, 1981 and asked if Teresa Barrera's household could be issued supplemental stamps during the month of October. I told him that Petra Sosa had eight children, that none of the family members were working and that they did not have money to buy food. He stated his office was not required to issue supplemental food coupons until the following month after the change in circumstances was reported. He also stated that the policy and practice of his office was to wait until the following month to issue any supplemental stamps.

5. All of the facts contained in paragraphs one through four are true and correct to my own knowledge.

/s/ CRISANTA GUERRA
Crisanta Guerra

SUBSCRIBED AND SWORN TO before me on this the 7th day of October, 1981.

ADELITA M. VALDEZ
Notary Public in and for
The State of Texas

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

NATIVIDAD CASTILLO, ET AL., PLAINTIFFS

v.

JOHN BLOCK, ET AL., DEFENDANTS

STATE OF TEXAS
COUNTY OF CAMERON

AFFIDAVIT

BEFORE ME, the undersigned, a Notary Public in and for said County, State of Texas, on this day personally appeared Blanca Martinez, after being by me duly sworn, deposes and says:

1. My name is Blanca Martinez. I am the mother of Vanessa Marie Martinez, nine months old. I am presently unemployed and the only income I receive is a monthly check for $85.00 from the welfare program, Aid to Families With Dependent Children (AFDC).

2. I began living at my parents residence, Joe and Sylvia Santillana on or about the second week of August, 1982, after separating from my husband. I am living at this residence temporarily until I am able to obtain separate housing. In addition to my daughter and myself, the following individuals reside at this residence: Joe Santillana, Sylvia Santillana, Adan Santiana and Paul Santiana.

3. The income I receive per month is only for my daughter and myself. Joe Santillana receives a monthly check from Social Security and Sylvia Santillana is employed. The income received by Joe and Sylvia Santillana is not available to Blanca Martinez.

4. I applied for food stamps in the Brownsville food stamp office on or about August 16, 1982. I requested emergency assistance since I was unemployed and without any income to purchase food. My application was denied because I lived at the same residence as my parents and therefore could not be considered a separate household. I was not asked any questions as to whether my family and the Santillana family combined our resources, shared expenses, or purchased food together.

5. Although Sylvia Santillana was not previously receiving food stamps she applied for food stamps on or about the last week of August. Her application was approved and we are now receiving $60 a month in food stamps for six individuals, or $10 a month per person. I was nonetheless without any food stamps for 30 days. This amount is insufficient to feed my daughter and myself.

6. The facts contained in paragraphs 1-5 above are true and correct to my own knowledge.

/s/ BLANCA MARTINEZ
Blanca Martinez

SUBSCRIBED AND SWORN to before me o this the 27th day of October, 1982.

(SIGNATURE)
Notary Public in and for
The State of Texas

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

NATIVIDAD CASTILLO, ET AL., PLAINTIFFS

v.

JOHN BLOCK, ET AL., DEFENDANTS

STATE OF TEXAS
COUNTY OF CAMERON

AFFIDAVIT

BEFORE ME, the undersigned, a Notary Public in and for said County, State of Texas, on this day personally appeared Sara Cortez, after being by me duly sworn, deposes and says:

1. My name is Sara Cortez. I am the mother of Perla Ruby Cortez and Sylvia Cortez, ages three and two. I am presently unemployed and the only income my family receives is $117.00 a month in Aid to Families With Dependent Children (AFDC). The income I receive from AFDC is only for myself and my children.

2. I began living at my parents residence, Roberto Costales and Maria Trujillo Costales, on or about the last week of April. I began living there after separating from my husband. I am living there temporarily until I am able to obtain separate housing. For the previous four years I did not live at my parents residence and I am doing so only because I cannot afford separate housing. Also living at this residence are my two younger brothers.

3. I applied for food stamps for myself and my two daughters in the Brownsville food stamp office on or about the last week of April, 1982. I requested emergency assistance since I was unemployed and had no source of

income. My application was denied because I was living with my parents and neither one of them was 60 years of age. I informed the caseworker that I purchase and prepare food separately from my parents. However, I could not qualify as a separate household. I was without any food stamps or income to buy food for several weeks. Maria Trujillo Costales applied for food stamps in May and my children and I were included as part of her household. We now receive $291 in food stamps for seven individuals or $41 per person. This is not enough to properly feed my children and myself.

The facts contained in paragraphs 1-3 above are true and correct to my own knowledge.

/s/ SARAH CORTEZ
Sarah Cortez

SUBSCRIBED AND SWORN to before me on this the 28th of October, 1982.

(SIGNATURE)
Notary Public in and for
The State of Texas

My Commission Expires:
4/27/86

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Civil Action No. 81-260

NATIVIDAD CASTILLO, ET AL., PLAINTIFFS

v.

JOHN BLOCK, ET AL., DEFENDANTS

STATE OF TEXAS
COUNTY OF CAMERON

AFFIDAVIT

BEFORE ME, the undersigned, a Notary Public in and for said County, State of Texas, on this day personally appeared Elias Ruiz, after being by me duly sworn, deposes and says:

1. My name is Elias Ruiz. I am the father of Maricela Ruiz, age 2, and Cindy Ruiz, age 4. I am presently unemployed. My wife, Belinda Ruiz is presently in the hospital because of injury and is unable to work.

2. My wife, my children and I have been living at my mother's residence, Estella Ruiz, for approximately eight months. We are living at this residence temporarily until I am able to obtain separate housing. I have not been able to afford separate housing since I lost my job eight months ago. When I lost my job my mother offered to allow us to live at her house temporarily. I have lived separately from my mother since I was married six years ago.

3. My family presently has no income. My mother's limited resources are used to support herself and her son and are not available to me or my family. During the eight months we have lived at my mother's residence we have

purchased and prepared food separately. We were able to do this because of my wife's income when she was working. My mother has not contributed to my family's support.

4. I applied for food stamps in the Brownsville food stamp office on or about February 21, 1984. I requested emergency assistance since I was unemployed, my wife is in the hospital and we are without any income to purchase food. My application was denied because I live at the same residence as my mother and therefore can not be considered a separate household. I was not asked any questions as to whether my family and my mother's family combined our resources, shared expenses, or purchased food together.

5. If my family is not granted food stamps immediately I will not be able to feed my family. We will suffer irreparable injury as a result of the lack of food.

6. The facts contained in paragraphs 1-5 are true and correct to my own knowledge.

/s/ ELIAS RUIZ
Elias Ruiz

SUBSCRIBED AND SWORN to before me on this the 27th day of February, 1984.

/s/ KATHERINE M. PAREDEZ
Notary Public in and for
Cameron County, Texas

My Commission Expires:
6/13/87

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Civil Action No. _____

SYLVIA NIETO, ET AL., PLAINTIFFS

v.

JOHN BLOCK, ET AL., DEFENDANTS

AFFIDAVIT

BEFORE ME, the undersigned, a Notary Public in and for said County, State of Texas, on this day personally appeared SYLVIA NIETO, after being by me duly sworn, deposes and says:

1. My name is SYLVIA NIETO. I am the mother of ROLANDO NIETO.

2. Our only income is $176.47 monthly supplemental security income check due to my physical disability.

3. My son and I reside at my parents home. My father is 57 years old and my mother is 52 years old. I do not have the resources to maintain a separate residence.

4. My son and I are an economic unit separate from my parents. As such we have received food stamps for the past eight months. My food stamp applications had previously been certified for two or three months each. On December 8, 1981, my application for food stamps for the period beginning January 1982 was denied. My application was denied because my family was classified as belonging to the household as the family of Eusebio Nieto, Sr. I was not asked any questions as to whether my family and the family of my father, Eusebio Nieto, Sr., combined our resources, shared expenses, or purchased food together.

5. My disability check is designated to be used for my own personal needs only. Since I have no other income I

must use this money for my son's needs also. This money is not sufficient to pay for our needs such as transportation, clothing, my son's medical bills and for food. If we do not receive food coupons for this month, we will not be able to eat properly.

/s/ SYLVIA NIETO
Sylvia Nieto

SUBSCRIBED TO AND BEFORE ME on this 11th day of January, 1982.

/s/ EMMA VALERO
Notary Public in and for
Cameron County, Texas

My Commission Expires
3/28/84

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

C.A. No. _____

ROBERT CODY, ET AL., PLAINTIFFS

v.

JOHN BLOCK, ET AL., DEFENDANTS

AFFIDAVIT

BEFORE ME, the undersigned, a Notary Public in and for said County, State of Texas, on this day personally appeared Robert Cody, after being by me duly sworn, deposes and says:

1. My name is Robert Cody. I am the husband of Jerry Cody and the father of Gary and Robin Cody. My wife and I are migrant farmworkers. We arrived in Harlingen, Texas from Benton Harbor, Michigan on approximately December 18, 1981.

2. Jerry and I received our last income in Michigan where we worked as farm laborers. All the members of my family are presently unemployed. I have tried to obtain employment since arriving in Harlingen, but I have not been successful. We spent most of our wages earned in Michigan for expenses incurred in traveling to Harlingen. The remainder of our income has been spent for food during our first two weeks in Harlingen.

3. My family and I are living in the home of my mother, Erma Lee Cody. We are living there because we do not have sufficient resources to live in separate housing. Erma Lee Cody has five children, is unemployed and receives food stamps and a check from the Veteran's Administration. My family and the family of Erma Lee Cody are not living as one economic unit. We do not combine our

resources, and we do not purchase food in common. My family and I are temporarily living with Erma Lee Cody until we can afford separate housing.

4. I applied for food coupons on January 4, 1982 in the Harlingen Food Stamp office. My application for food stamps was denied because my family was classified as belonging to the same household as the family of Erma Lee Cody. Erma Lee Cody had previously been certified to receive food stamps for her family for the month of January. She receives $210 of food coupons for her family of six. I was told my application could not be considered. The caseworker told me that Erma Lee Cody would be issued supplemental food stamps in February because of the increase in the number of persons in the household. I was in need and I am still in need of emergency assistance. I was not asked any questions as to whether my family and the family of Erma Lee Cody combined our resources, shared expenses, or purchased food together.

5. My family and I do not have any money to buy food. We are receiving assistance for my two children from the Women, Infants, and Children (WIC) program, but this is not enough to properly feed them. We do not have any assets except for a 1973 Ford. If we do not receive food coupons for this month, Jerry Cody, my two children, and I will not be able to eat properly.

6. The facts contained in paragraphs 1-5 above are true and correct to my own knowledge.

/s/ ROBERT J. CODY
Robert Cody

SUBSCRIBED AND SWORN to before me on this the 22nd day of January, 1982.

/s/ EMMA VALERO
Notary Public in and for
The State of Texas

My Commission Expires
3/25/84

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

C.A. No. _____

JERRY CODY, ET AL., PLAINTIFFS

v.

JOHN BLOCK, ET AL., DEFENDANTS

AFFIDAVIT

BEFORE ME, the undersigned, a Notary Public in and for said County, State of Texas, on this day personally appeared Jerry Cody, after being by me duly sworn, deposes and says:

1. My name is Jerry Cody. I am the wife of Robert Cody and the mother of Gary and Robin Cody. My husband and I are migrant farmworkers. We arrived in Harlingen, Texas from Benton Harbor, Michigan on approximately December 18, 1981.

2. Robert and I received our last income in Michigan where we worked as farm laborers. All the members of my family are presently unemployed. I have tried to obtain employment since arriving in Harlingen, but I have not been successful. We spent most of our wages earned in Michigan for expenses incurred in traveling to Harlingen. The remainder of our income has been spent for food during our first two weeks in Harlingen.

3. My family and I are living in the home of my mother-in-law, Erma Lee Cody. We are living there because we do not have sufficient resources to live in separate housing. Erma Lee Cody has five children, is unemployed and receives food stamps and a check from the Veteran's Administration. My family and the family of Erma Lee Cody are not living as one economic unit. We do not combine

our resources, and we do not purchase food in common. My family and I are temporarily living with Erma Lee Cody until we can afford separate housing.

4. I applied for food coupons on January 4, 1982 in the Harlingen Food Stamp office. My application for food stamps was denied because my family was classified as belonging to the same household as the family of Erma Lee Cody. Erma Lee Cody had previously been certified to receive food stamps for her family for the month of January. She receives $210 of food coupons for her family of six. I was told my application could not be considered. The caseworker told me that Erma Lee Cody would be issued supplemental food stamps in February because of the increase in the number of persons in the household. I was in need and I am still in need of emergency assistance. I was not asked any questions as to whether my family and the family of Erma Lee Cody combined our resources, shared expenses, or purchased food together.

5. My family and I do not have any money to buy food. We are receiving assistance for my two children from the Women, Infants, and Children (WIC) program, but this is not enough to properly feed them. We do not have any assets except for a 1973 Ford. If we do not receive food coupons for this month, Robert Cody, my two children, and I will not be able to eat properly.

6. The facts contained in paragraphs 1-5 above are true and correct to my own knowledge.

/s/ JERRY L. CODY
Jerry Cody

SUBSCRIBED AND SWORN to before me on this the 22nd day of January, 1982.

/s/ EMMA VALERO
Notary Public in and for
The State of Texas

My Commission Expires
3/25/84

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Civil Action No. B-83-106

CECILIA VILLAFRANCA, FOR HERSELF AND AS NEXT FRIEND OF ALBERTO TREVIÑO AND ERIC VILLAFRANCA, MINORS; AND GREGORIO ALVARADO AND MARIA ALVARADO FOR HERSELF AND AS NEXT FRIEND OF CLAUDIO ALVARADO, GREGORIO ALVARADO, JR., AND MAURICIO ALVARADO, MINORS; PLAINTIFFS

v.

JOHN BLOCK, IN HIS CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF AGRICULTURE; MARLIN JOHNSTON IN HIS CAPACITY AS DIRECTOR OF THE DEPARTMENT OF HUMAN RESOURCES; AND JOSE CAMPOS IN HIS CAPACITY AS THE PROGRAM DIRECTOR FOR THE BROWNSVILLE FOOD STAMP OFFICE OF THE DEPARTMENT OF HUMAN RESOURCES, DEFENDANTS.

PLAINTIFFS FIRST AMENDED COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiffs Villafranca are an indigent family of eligible participants in the federal Food Stamp Program. Plaintiffs received food stamps through March, 1983. Defendants refused to certify the Villafranca family for food stamps for the month of April and thereafter because the Plaintiffs live at the same residence as Mirto Alaniz, Plaintiff Cecilia Villafranca's brother. Even though Plaintiffs are a separate economic unit from Mirto Alaniz, Defendants consider the two families to be one household based on the definition of household as contained in 47 Fed. Reg. 55903, 55908 (1982).

Plaintiffs Alvarado are an indigent family of eligible participants in the federal Food Stamp Program. They received food stamps through April, 1983. Defendants refused to certify the Alvarado family for food stamps for the month of May and thereafter because they live in the same house as Magdalena Tovar, Plaintiff Gregorio Alvarado's sister. Plaintiffs Alvarado are a separate economic unit from the Tovar family. Nonetheless Defendants consider the two families to be one household based on the definition of household as contained in 47 Fed. Reg. 55903, 55908 (1982) Plaintiff Alvarado family is without any income or resources to purchase food.

JURISDICTION

2. Jurisdiction is conferred on the court by 28 U.S.C. § 1337 (Interstate Commerce); 28 U.S.C. § 1331 (Federal Question); and 28 U.S.C. 1343(3) (Civil Rights).

PLAINTIFFS

3. Plaintiffs Cecilia Villafranca, Albert Trevino and Eric Villafranca are an indigent family residing in Brownsville, Texas, and are eligible participants in the Food Stamp Program of 1977, 7 U.S.C. § 2011 *et seq.* Plaintiffs Alberto Trevino and Eric Villafranca are minors and this action is brought on their behalf by their mother and next friend, Cecilia Villafranca.

4. Plaintiffs Gregorio Alvarado, Maria Alvarado, Claudio Alvarado, Gregorio Alvarado Jr., and Mauricio Alvarado are an indigent family residing in Brownsville, Texas and are eligible participant in the Food Stamp Program of 1977, 7 U.S.C. § 2011 *et seq.* Plaintiffs Claudio Alvarado, Gregorio Alvarado, Jr., and Mauricio Alvarado are minors and this action is brought on their behalf by their mother and next friend Maria Alvarado.

5. The Plaintiffs bring this action under Rule 23(b)(2) F.R. Civ. P. on behalf of themselves and all persons in the Southern District of Texas who have been or will be disqualified from certification for the Food Stamp Program because of the definition of household contained in 47 Fed. Reg. 55903, 55908 (December 14, 1982) or who are disqualified because of the Defendants' interpretation of said definition as part of the regulation. Plaintiffs' class is definite but is so numerous that joinder of all members of the class is impracticable. Plaintiffs present claims which are typical of and include any claims affecting class members. Plaintiffs will fairly and adequately protect the interest of the class. Defendants have acted and refused to act on grounds applicable to the class members as a whole making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

DEFENDANTS

6. Defendant John Block is the Secretary of the United States Department of Agriculture and is responsible for the administration of the Food Stamp Program throughout the United States.

7. Defendant Marlin Johnston is the Director of the Department of Human Resources and is charged with the duty to administer the food stamp program, 7 U.S.C. § 2011 *et seq.*, and the regulations of the Food and Nutrition Service promulgated thereunder. He is further charged with the implementation of the Food Stamp Handbook, instructions issued by the U.S. Food and Nutrition Service to explain the Federal Register, and the Texas Regulations relating to the administration of the Food Stamp Program.

8. Defendant Jose Campos is the Program Director of the Brownsville Food Stamp Office and is in charge of administering the program and implementing the food stamp regulations.

STATEMENT OF THE CASE

9. Plaintiffs have received public assistance in the form of food stamps and aid to Families with Dependent Children (AFDC) since September 1982 when Plaintiff Cecilia

Villafranca's husband was imprisoned. Plaintiffs lived alone until December, 1982. At this time, at the insistence of a case worker at the Department of Human Resources, Plaintiffs sought to share living quarters with another individual for the purpose of decreasing the family's monthly housing costs. Plaintiffs moved to 404 San Eugenio, Brownsville, Texas, the same residence of Mirto Alaniz, Plaintiff's brother.

10. Plaintiffs and Mirto Alaniz are separate economic units. They agreed to divide the rent and utility bills equally. The two households do not combine their resources and do not purchase and prepare food together. Plaintiffs have no choice but to share a housing unit with another family because their only income is $165 a month received in AFDC and child support. Plaintiff are waiting for placement in a subsidized housing unit and until that time are unable to afford to pay full rent on a unit.

11. Plaintiff Cecilia Villafranca applied for foodstamps in the Brownsville food stamp office on February 1, 1983. She was denied foodstamps beginning April 1, 1983 because she lives at the same residence as her brother and consequently cannot be considered a separate household.

12. Plaintiffs Alvarado family have received food stamps for approximately two years. In April, 1983 Plaintiff Gregorio Alvarado applied for food stamps in the Brownsville food stamp office. Plaintiffs were denied food stamps beginning May 1, 1983 and thereafter because they live in the same house as Magdalena Tovar, Plaintiff Gregorio Alvarado's sister.

13. Plaintiffs Alvarado are living in the Tovar's home because they are without any income or resources to rent separate housing. Plaintiffs Alvarado are living with the Tovar's temporarily until Plaintiff Gregorio Alvarado can find employment and can obtain separate housing.

14. Plaintiffs Alvarado and the Tovar family are separate economic units. They do not combine their resources nor do they purchase and prepare food together.

15. The federal regulations and the defendants define household in a manner that assumes that all siblings who live together customarily purchase and prepare food together making them one household for food stamp purposes. Under this definition Plaintiffs are not eligible to receive food stamps.

16. The Department of Agriculture did not provide adequate notice and comment periods prior to the promulgation of the Food Stamp regulations published 47 Fed. Reg. 55903, 55908 (December 14, 1982). The Plaintiffs were not given an opportunity to comment on the regulations prior to their effective date.

17. If Plaintiffs are not issued food stamps immediately, they will suffer both physical and emotional injury in the form of malnutrition, illnesses associated with malnutrition, distress and psychological trauma and degradation.

FIRST CLAIM FOR RELIEF

18. By assuming that Plaintiffs are members of the same household as Mirto Alaniz and Juan Tovar, without considering income and need, Defendants have under color of state law denied Plaintiffs due process of law and equal protection of the law in violation of the Fifth and Fourteenth Amendments to the United States Constitution for which injury Plaintiffs are entitled to redress under 42 U.S.C. § 1983.

SECOND CLAIM FOR RELIEF

19. By not allowing adequate notice and comment period prior to the effective date of the regulations, the Defendants violated the Administrative Procedure Act, 5 U.S.C. § 553(b)(c). By Defendants' deviation from the procedures set out in the Administrative Procedure Act, the Plaintiffs were denied the opportunity for effective participation in the rule making process and are entitled to judicial review under 5 U.S.C. § 702.

IRREPARABLE HARM

20. Defendants' actions, if not enjoined will cause Plaintiffs immediate and irreparable harm for which Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

A. Pending hearing on preliminary injunction grant a temporary restraining order directing Defendants to immediately issue food stamp benefits based upon Plaintiffs' current income level and family size;

B. Enter a preliminary injunction enjoining the Defendants and all other persons acting in concert with them from enforcing the household definition as provided in the First Claim For Relief.

C. Enter a declaratory judgment that Defendants' enforcement of the household definition which deprives eligible applicants of live necessities as set out in the First Claim for Relief violates Plaintiffs' rights under the Due Process Clause and the Equal Protection Clause of the Fifth and Fourteenth Amendments to the United States Constitutions.

D. Enter a Permanent Injunction enjoining the Defendants, and all other persons acting in concert with them from enforcing the household definition as set forth in the First Claim for Relief.

E. Enter a declaratory judgment that Defendants failed to follow the rulemaking procedures of the Administrative Procedure Act as set forth in the Second Claim For Relief.

F. Award such other relief as may be deemed just and equitable, including costs and reasonable attorney's fees.

Respectfully submitted,

TEXAS RURAL LEGAL AID, INC.
833 West Price Road
Brownsville, Texas 78520
(512) 546-5558

By: /s/ CRISANTA GUERRA
Crisanta Guerra
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Civil Action No. _____

CECILIA VILLAFRANCA, ET AL., PLAINTIFFS

v.

JOHN BLOCK, ET AL., DEFENDANTS.

STATE OF TEXAS
COUNTY OF CAMERON

AFFIDAVIT

BEFORE ME, the undersigned, a Notary Public in and for said County, State of Texas, on this day personally appeared Cecilia Villafranca, after being by me duly sworn, deposes and says:

1. My name is Cecilia Villafranca. I am the mother of Albert Treviño, age 5, and Eric Villafranca, age 1. My husband is presently in prison and unable to contribute to our support. My only source of income is $80 per month in child support and $85 a month in Aid to Families With Dependent Children; (AFDC)

2. My two children and I lived alone since September 1982. When my husband went to prison we were unable to afford to pay the full rent on an apartment so we were forced to find another family to share a housing unit. In December 1982 my children and I moved in to my brother's apartment. We agreed to divide the rent and utility expenses. We each presently pay $100 a month in rent. Even though we share the same housing unit we do not combine our resources nor do we purchase and prepare our food together. I purchase food for my family

separately and keep it in a separate place from his food in the refrigerator and cupboards. I am residing here only temporarily until I am able to secure subsidized housing.

3. My two children and I received food stamps through February, 1983. I applied for food stamps at the Brownsville food stamp office on February 1, 1983. I was denied food stamps beginning March 1, 1983 because my children and I live in the same housing unit as my brother.

4. I do not receive sufficient income per month to buy food for my children. I do not have any assets. If I am not granted food stamps my children and I will not be able to eat properly.

5. The facts contained in paragraph 1-4 above are true and correct to my own knowledge.

/s/ CECILIA VILLAFRANCA
Cecilia Villafranca

SUBSCRIBED AND SWORN to before me on this the 14th day of April, 1983.

/s/ TOMANITA PAREDES
Notary Public in and for
The State of Texas

My Commission Expires:
8/4/1984

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Civil Action No. B-83-106

CECILIA VILLAFRANCA, ET AL., PLAINTIFFS

v.

JOHN BLOCK, ET AL., DEFENDANTS

STATE OF TEXAS
COUNTY OF CAMERON

AFFIDAVIT

BEFORE ME, the undersigned, a Notary Public in and for said County, State of Texas, on this day personally appeared Gregorio Alvarado, after being by me duly sworn, deposes and says:

1. My name is Gregorio Alvarado. I live with my wife Maria and my three children at 1045 San Manuel, Brownsville, Texas. This is the residence of Juan and Magdalena Tovar and their five children.

2. Magdalena Tovar is my sister. My family is presently living at her residence because we cannot afford to pay rent for separate housing. I am unemployed and I am not receiving unemployment benefits. My wife cannot work because she is ill. We are only living here temporarily until I can find a job and can afford to pay rent.

3. My family received food stamps through April, 1983. We were denied food stamps beginning May 1, 1983 because I live in the same house as my sister and her family. My family will not be considered a separate household from my sister's family.

4. My brother-in-law is employed and earns enough income to support his family. He does not earn enough income to support both families. We do not combine our resources and we do not purchase and prepare food together.

5. If we do not receive food stamps I will not be able to feed my children and my wife.

6. The facts contained in paragraphs 1-5 above are true and correct to my own knowledge.

/s/ GREGORIO ALVARADO
Gregorio Alvarado

CERTIFICATE OF TRANSLATION

I do hereby certify that I have translated the foregoing Affidavit from the English language to Spanish to Gregorio A. Alvarado, whose name is subscribed, and who verifies same was understood to be true and correct.

/s/ TOMANITA PAREDES

SUBSCRIBED AND SWORN to before me, on this the 19th day of May, 1983.

/s/ TOMANITA PAREDES
Notary Public in and for
Cameron County, Texas

My Commission Expires:
8/4/84

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Civil Action No. B-81-260

NATIVIDAD CASTILLO, ET AL., PLAINTIFFS,

v.

MARLIN JOHNSTON, ET AL., DEFENDANTS.

TEMPORARY RESTRAINING ORDER

This case came on to be heard on Plaintiffs' application for a Temporary Restraining Order based on Plaintiffs' Complaint, Affidavits, and Brief in Support of the Application pending a hearing on Plaintiffs' Motion for Preliminary Injunction from which documents it appears to this Court that the Plaintiffs will be deprived of rights, benefits, and services without which benefits, i.e., food stamps, the Plaintiffs will suffer irreparable harm caused by the Defendants refusal to certify the Plaintiffs on an emergency basis on the basis of the Plaintiffs' present income assets and family size.

It further appears to the Court that immediate, irreparable injury, loss and damage will result to the Plaintiffs before a full hearing can be held on Plaintiffs' Motion for Preliminary Injunction in that the Defendants do not plan to certify the Plaintiff family for food stamps until the month of November. It further appears to the Court that the Plaintiffs have some substantial likelihood of prevailing on the merits of their complaint and it is therefore hereby

ORDERED that Defendants JOHNSTON and CAMPOS and those acting in concert with them are hereby restrained from refusing to certify the Plaintiff SOSA family on any criteria other than their actual current income taking into consideration the number of persons in the family.

Plaintiffs' Motion for Preliminary Injunction is set for hearing on the 16th day of October, 1981. This Order shall expire at 11 o'clock p.m. on the 16th day of October, 1981 unless before such time this Order is extended for good cause or by agreement of the parties.

Bond for this Temporary Restraining Order is set at seven dollars ($7).

Copies of this Order shall be immediately served on the Defendants who shall immediately take steps to comply with the terms of this Order.

/s/ FILEMON B. VELA
United States District Judge

In the Supreme Court of the United States

No. 85-250

JOHN R. BLOCK, SECRETARY OF AGRICULTURE, APPELLANT

v.

NATIVIDAD CASTILLO, ET AL.

APPEAL from the United States District Court for the Southern District of Texas.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

NOVEMBER 18, 1985

APPELLANT'S

BRIEF

Supreme Court, U.S.
FILED
JAN 2 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-250

In the Supreme Court of the United States

OCTOBER TERM, 1985

JOHN R. BLOCK, SECRETARY OF AGRICULTURE,
APPELLANT

v.

NATIVIDAD CASTILLO, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

BRIEF FOR THE APPELLANT

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Solicitor General

RICHARD K. WILLARD
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QUESTION PRESENTED

Whether Section 3(i) of the Food Stamp Act of 1964, 7 U.S.C. 2012(i), which provides that parents and children, or siblings, who live together shall generally constitute a single "household" for food stamp entitlement purposes, violates equal protection principles of the Fifth Amendment's Due Process Clause by discriminating against family members or impermissibly burdening family decisions to live together.

PARTIES TO THE PROCEEDING

Appellant John R. Block, Secretary of Agriculture, was named as a defendant in each of four consolidated cases before the district court.

The plaintiffs in Civil Action No. B-81-260, in addition to Natividad Castillo, were Fernando Sosa; Petra Sosa, for herself and as next friend of Roberto Sosa, Saul Sosa, Roy Sosa, Eduardo Sosa, Catalina Castillo, Natividad Castillo, and Graciela Castillo, Minors; Blanca Martinez, for herself and as next friend of Venessa Marie Martinez, Minor; Sara Cortez, for herself and as next friend of Perla Ruby Cortez and Sylvia Cortez, Minors; Elias Ruiz; and Belinda Ruiz, for herself and as next friend of Marciela Ruiz and Cindy Ruiz, Minors. The non-federal defendants were Marlin Johnston, in his capacity as the Director of the Department of Human Resources; and Jose Campos, in his capacity as the Program Director for the Brownsville Food Stamp Office of the Department of Human Resources.

The plaintiff in Civil Action No. B-82-7 was Sylvia Nieto, for herself and as next friend of Rolando Nieto, Minor. The non-federal defendants were Marlin Johnston, in his capacity as the Director of the Department of Human Resources; and Cruz Cervantes, in his capacity as the Supervisor for the Raymondville Food Stamp Office of the Department of Human Resources.

The plaintiffs in Civil Action No. B-82-21 were Robert Cody, Jerry Cody, for themselves and as next friend of Gary Cody and Robin Cody. The non-federal defendants were Marlin Johnston, in his capacity as the Director of the Department of Human Resources; and Rene Zamora, in his capacity as the Program Director of the Harlingen Food Stamp Office of the Department of Human Resources.

The plaintiffs in Civil Action No. B-83-106 were Cecilia Villafranca, for herself and as next friend of Alberto Trevino and Eric Villafranca, Minors; and Gregorio Alvarado; Maria Alvarado, for herself and as next friend of Claudio Alvarado, Gregorio Alvarado, Jr., and Mauricio Alvarado, Minors. The non-federal defendants were Marlin Johnston, in his capacity as the Director of the Department of Human Resources; and Jose Campos, in his capacity as the Program Director for the Brownsville Food Stamp Office of the Department of Human Resources.

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In the Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-250

JOHN R. BLOCK, SECRETARY OF AGRICULTURE,
APPELLANT

v.

NATIVIDAD CASTILLO, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

BRIEF FOR THE APPELLANT

OPINIONS BELOW

The memorandum and order of the district court (J.S. App. 1a-8a) is unreported. The supplemental memorandum of the district court (J.S. App. 9a-13a) is also unreported.

JURISDICTION

The order of the district court was entered on April 23, 1985. A notice of appeal was filed on May 17, 1985 (J.S. App. 14a). On July 8, 1985, Justice White extended the time within which to docket this appeal to and including August 15, 1985. The jurisdictional statement was filed on August 14, 1985 and

probable jurisdiction was noted on November 18, 1985. The jurisdiction of this Court rests on 28 U.S.C. 1252.

STATUTORY PROVISION INVOLVED

Section 3(i) of the Food Stamp Act of 1964, 7 U.S.C. 2012(i), provides in pertinent part:

> "Household" means (1) an individual who lives alone or who, while living with others, customarily purchases foods and prepares meals for home consumption separate and apart from the others, or (2) a group of individuals who live together and customarily purchase food and prepare meals together for home consumption; except that parents and children, or siblings, who live together shall be treated as a group of individuals who customarily purchase and prepare meals together for home consumption even if they do not do so, unless one of the parents, or siblings, is an elderly or disabled member. * * *

STATEMENT

The Food Stamp Act of 1964, 7 U.S.C. (& Supp. II) 2011 *et seq.*, establishes a public welfare program, funded by the Department of Agriculture and administered by state agencies, that supplements the food purchasing power of low-income households. This appeal involves four consolidated suits, brought by potential benefit recipients (appellees) against the Secretary of Agriculture (the Secretary) and state welfare administrators. The suits challenge the constitutionality of Section 3(i) of the Act, 7 U.S.C. 2012(i), which defines the term "household" for food stamp entitlement purposes. The United States District Court for the Southern District of Texas held

that Section 2012(i) is unconstitutional and enjoined its enforcement against appellees. The court reasoned that the statute violates equal protection principles of the Due Process Clause of the Fifth Amendment by creating a classification that discriminates against family members and that impermissibly burdens family decisions to live together.[1]

A. The Food Stamp Program

1. The Food Stamp program is a federally-funded, state-administered effort that "permit[s] low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power." 7 U.S.C. 2011. Households with aggregate income and financial resources below specified national standards may participate. 7 U.S.C. (& Supp. II) 2014. They receive coupons (food stamps) that can be used for food purchases at retail stores. 7 U.S.C. 2013.

Although the federal government is responsible for establishing eligibility standards, see 7 U.S.C. (& Supp. II) 2014, the states have primary responsibil-

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[1] Several courts have rejected equal protection challenges to Section 2012(i). See *Steinberg* v. *United States Department of Agriculture*, 613 F. Supp. 432 (E.D.N.Y. 1984), aff'd, No. 85-6028 (2d Cir. July 16, 1985) (unpublished order), petition for cert. pending, No. 85-5624 (filed Oct. 10, 1985); *Levesque* v. *Block*, No. C82-437-L (D.N.H. Jan. 26, 1983), aff'd in part on other grounds, 723 F.2d 175 (1st Cir. 1983). A number of pending suits present similar equal protection challenges. See *Tripp* v. *Block*, No. 85-1203 Civ. T17 (M.D. Fla. filed July 25, 1985); *Ma* v. *Block*, Civ. No. 85-64-D-1 (S.D. Iowa filed Mar. 25, 1985); *Rogers* v. *Mansour*, Civ. No. K-84-507 (W.D. Mich. removed from state court Nov. 26, 1984); *Robinson* v. *Block*, Civ. No. 84-4229 (E.D. Pa. filed Sept. 12, 1984).

ity for distributing food stamps. See 7 U.S.C. (& Supp. II) 2020; *Atkins* v. *Parker*, No. 83-1660 (June 4, 1985), slip op. 2. State agencies are authorized to allot food stamps to each eligible household in an amount based on the cost of a "thrifty food plan," reduced by 30% of the household's income. 7 U.S.C. 2017. The "thrifty food plan" is a diet, determined by the Secretary, that adequately feeds an average family of four. 7 U.S.C. 2012(o).[2] The cost of the diet is used to calculate standard household allotments, based on household size, that "tak[e] into account economies of scale." *Ibid.*; see 7 C.F.R. 273.10(e)(4).

The cost of the thrifty food plan diet is updated annually, through general notices in the Federal Register, to reflect changes in the price of food. See 7 U.S.C. 2012(o); 7 C.F.R. 273.10(e)(4). Under the present plan, a one-member household is entitled to a maximum food stamp allotment of $80 per month, a four-member household is entitled to a maximum of $268 per month, and an eight-member household is entitled to a maximum of $483 per month. See 50 Fed. Reg. 36641, 36642 (1985). As these figures demonstrate, the per capita allotment diminishes with increasing household size to reflect the economies of group food purchase and preparation. Specifically, the maximum benefit for a family of eight is 90.1% of the benefits paid to two families of four, and

[2] The Department of Agriculture's Food and Nutrition Service (FNS) develops the thrifty food plan on the basis of dietary standards, the nutrient content of foods, and food consumption patterns among low-income households. See 48 Fed. Reg. 34700-34707 (1983). See also Consumer Nutrition Division, Human Nutrition Information Service, U.S. Department of Agriculture, *The Thrifty Food Plan, 1983* (Aug. 1983).

75.5% of the benefits paid to eight single-member households.[3]

2. The Food Stamp program is the Nation's second most costly "needs-based" public assistance program. See S. Rep. 97-128, 97th Cong., 1st Sess. 2 (1981). Program outlays were over $11 billion in 1983, providing assistance to approximately 21 million participants. See Office of Management and Budget, *Budget of the United States Government FY 1985*, at 8-43; U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States 1985*, at 122-123 (105th ed.). The program has grown dramatically since its inception, registering a 20-fold increase in outlays and a three-fold increase in participation since 1970.[4]

The burgeoning growth of the Food Stamp program has produced public concern over administrative inefficiency and recipient abuse. Congress has held numerous hearings to investigate methods for

[3] The economy of scale factors are calculated on the basis of an extensive nationwide survey, conducted by the Department of Agriculture, of food costs for families of different sizes. See Consumer and Food Economics Institute, Agricultural Research Service, U.S. Department of Agriculture, *The Effect of Household Size on the Cost of Diets That Are Nutritionally Equivalent* (Sept. 1975).

[4] U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States 1985*, at 123 (105th ed.). In 1965, approximately 633,000 persons participated in the Food Stamp program, representing a federal outlay of $33 million (*ibid.*). By 1970, participation had grown to nearly 6.5 million persons, representing a federal outlay of $550 million (*ibid.*). In 1975, nearly 20 million persons participated, representing a federal outlay of over $4.3 billion (*ibid.*).

Food Stamp reform.[5] As a result of these hearings, Congress has enacted various amendments to the Food Stamp Act of 1964 to prevent waste and fraud. Congress has given specific attention to the term "household." The definition of that term is central to the Food Stamp program because food stamps are distributed on the basis of household units. The concept of a "household" unit has proven to be a frequent source of recipient abuse.

The 1964 Act defined "household" broadly to include virtually any single individual who prepared his own meals using separate cooking facilities and

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[5] See, *e.g.*, *Oversight of the Food Stamp Program: Hearings Before the Senate Comm. on Agriculture, Nutrition, and Forestry and the Subcomm. on Nutrition of the Senate Comm. on Agriculture, Nutrition, and Forestry*, 98th Cong., 2d Sess. (1984) [hereinafter cited as *1984 Senate Hearings*]; *Food Stamp Program: Hearings Before the Subcomm. on Domestic Marketing, Consumer Relations, and Nutrition of the House Comm. on Agriculture*, 97th Cong., 2d Sess. (1982) [hereinafter cited as *1982 House Hearings*]; *Proposed Reauthorization of the Food and Agricultural Act of 1977 (Food Stamps): Hearings Before the Senate Comm. on Agriculture, Nutrition, and Forestry*, 97th Cong., 1st Sess. Pt. II (1981) [hereinafter cited as *1981 Senate Hearings*]; *Fraud in Food Stamp Program: Hearing Before the Subcomm. on Domestic Marketing, Consumer Relations, and Nutrition of the House Comm. on Agriculture*, 97th Cong., 1st Sess. (1981) [hereinafter cited as *1981 House Hearing*]; *Options for Reforming the Food Stamp Program: Hearing Before the Senate Select Comm. on Nutrition and Human Needs*, 94th Cong., 1st Sess. (1975); *General Farm Program and Food Stamp Program (Food Stamps): Hearings Before the House Comm. on Agriculture*, 91st Cong., 1st Sess. Pt. 2 (1969); see also, *e.g.*, Staff of the Subcomm. on Departmental Operations of the House Comm. on Agriculture, 91st Cong., 2d Sess., *Field Investigation of the Operation of the Food Stamp Act of 1964* (Comm. Print 1970).

virtually any group of individuals that functioned as a single economic unit and shared common cooking facilities. See 7 U.S.C. (1964 ed.) 2012(e). However, as the Food Stamp program grew, Congress gave the term a more exacting definition. In 1971, Congress amended the definition of "household" to exclude most groups of unrelated persons from participation in the Food Stamp program. See 7 U.S.C. (Supp. II 1972) 2012(e). This Court declared the amendment unconstitutional, concluding that it represented purposeful discrimination against "hippie communes." *United States Department of Agriculture* v. *Moreno*, 413 U.S. 528 (1973).

In 1977, Congress again amended the definition, requiring groups of individuals, whether related or unrelated, who customarily purchased and prepared meals together, to be treated as a single household. 7 U.S.C. (Supp. I 1977) 2012(i). The definition provided that individuals, whether living alone or with others, could qualify as distinct households provided that each customarily purchased food and prepared meals separately. *Ibid.* The amendment was intended to end the focus on cooking facilities and "economic units" in classifying households, concentrating instead on "what the household members do with their food money." H.R. Rep. 95-464, 95th Cong., 1st Sess. 142 (1977).[6]

In 1981 and 1982, following extensive hearings revealing continuing widespread abuse in the Food

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[6] The House Committee expressly observed that "some persons who constitute [a single] eating unit may currently be certified as separate households because they are separate economic units. The Committee believes that their eating unit status, not their economic unit status, is what is relevant to the food stamp program." H.R. Rep. 95-464, *supra*, at 143.

Stamp program,[7] Congress once more addressed the term "household." These changes, enacted together with other program reforms as part of the 1981 and 1982 Omnibus Budget Reconciliation Acts, Pub. L. No. 97-35, Tit. I, 95 Stat. 358 *et seq.*, and Pub. L. No. 97-253, Tit. I, Subtit. E, 96 Stat. 772 *et seq.*, precipitated the present litigation.

The 1981 modifications addressed the application of the term "household" to parents and children. Congress provided that parents and children who live together shall comprise a single household for food stamp purposes, regardless of whether they purchase food and prepare meals separately or together, unless one of the parents is at least 60 years old. 7 U.S.C. (Supp. V 1981) 2012(i). The Senate Report indicates that this change was "designed to prevent household members from artificially claiming to be separate households although they live and prepare meals together." S. Rep. 97-128, 97th Cong., 1st Sess. 31 (1981). Families frequently attempted to increase their food stamp benefits—and to qualify for benefits for which they would otherwise be ineligible—by characterizing their members as separate households sharing a single roof. The amend-

[7] See *1982 House Hearings; 1981 Senate Hearings; 1981 House Hearing*. The Chairman of the Senate Committee cited estimates by the Administration and congressional investigators that from 11% to 20% of food stamp benefits were issued in error. *1981 Senate Hearings* 3 (statement of Chairman Helms). A Department of Agriculture spokesman suggested in the House hearing that losses through fraud might range as high as $1 billion. *1981 House Hearings* 10 (statement of Deputy Assistant Secretary Bode). See also *1982 House Hearings* 4 (statement of Rep. Coleman, citing estimates that $1 billion in food stamps are issued in error each year).

ment was intended to eliminate that abuse.[8] The Senate Committee on the Budget estimated that the change, together with a change eliminating boarders from participation in the Food Stamp program, would save $195 million in fiscal years 1982-1984. See S. Rep. 97-139, 97th Cong., 1st Sess. 52-53 (1981).

The 1982 modifications further refined the definition of "household" to prevent food stamp abuses. The principal change, presently codified with the

[8] The Senate Committee on the Budget explained the need for revision as follows (S. Rep. 97-139, 97th Cong., 1st Sess. 52-53 (1981)):

> Because small households are provided more food stamps per person and because the same standard deduction is applied to income regardless of household size, a residential unit that splits into several smaller households can, under present law, receive larger total benefits than would be the case if the individuals applied as a single, larger household.

The Senate Committee on Agriculture, Nutrition, and Forestry noted (S. Rep. 97-128, *supra*, at 31):

> Current law results in some individuals claiming separate household status for purposes of obtaining food stamp benefits to which they would not otherwise be entitled. This results when the individual claims separate household status and indicates he has zero gross income. The individual could be certified as a separate household although, in fact, he is being supported by his parents.

That Committee added (*id.* at 32):

> By allowing an exception for parents 60 years of age and older, those parents most likely to reside with their children, but who truly maintain separate household status, will not be barred from participation as separate households.

See also H.R. Rep. 97-106, 97th Cong., 1st Sess. 118-119 (1981).

1981 modifications at 7 U.S.C. 2012(i), prohibits siblings, as well as parents and children, from increasing their food stamp benefits by splintering into separate "households." It was enacted with an accompanying provision excepting disabled and elderly family members from the restriction. See *ibid.*; 7 U.S.C. 2012(r). These changes were adopted, together with other measures, upon the advice of federal and state food stamp administrators. See H.R. Rep. 97-687, 97th Cong., 2d Sess. 6, 25 (1982). The House Committee on Agriculture estimated that they would result in savings of $120 million in fiscal years 1983-1985. *Id.* at 105.[9]

Thus, Congress's 1981 and 1982 modifications to the definition of "household" reflect carefully structured refinements to reduce widespread fraud in the Food Stamp program and to preserve the public's limited welfare resources for the truly needy. The present definition, treating most parents and children, or siblings, who live together as single households for food stamp entitlement purposes, reflects a considered response to the persistent problem of family groups mischaracterizing their food purchasing and preparation habits to obtain undeserved food stamp benefits.

B. The Present Controversy

In September 1981, Natividad Castillo, his wife Petra Sosa, and their children, moved into the home of Sosa's daughter, Teresa Barrera (J.A. 26). The

[9] The Senate Committee on Agriculture, Nutrition, and Forestry recommended that all related persons be treated as a single household unless one of the related persons is elderly or disabled. See S. Rep. 97-504, 97th Cong., 2d Sess. 24-25, 87-88 (1982). However, the House proposal, limited to parents, children, and siblings, was adopted in conference. See H.R. Conf. Rep. 97-759, 97th Cong., 2d Sess. 62-63 (1982).

Castillo family applied for food stamp benefits from the Brownsville, Texas Food Stamp Office. Although the Barrera family already received food stamps, the Castillos claimed that they were entitled to their own food stamp allotment because they did not purchase food in common with the Barreras and the two families were not "living as one economic unit" (*id.* at 26-27). The Food Stamp Office denied the request, concluding that the Castillo and Barrera families constituted a single household within the meaning of 7 U.S.C. 2012(i). The Office indicated, however, that Barrera's food stamp allotment would be supplemented to reflect an increase in the household's size (J.A. 27).

On October 7, 1981, the Castillo family sued state food stamp officials in the United States District Court for the Southern District of Texas, claiming, inter alia, that the denial of their food stamp request violated the Fifth and Fourteenth Amendments (Civ. No. B-81-260). Two days later, the district court issued a temporary restraining order prohibiting the state agencies from denying the Castillos food stamp benefits on grounds other than their family income (J.A. 54-55). The Castillos sought class certification and amended their complaint to join the Secretary of Agriculture as a defendant and to add additional plaintiffs who, like the Castillos, were denied separate household status under the Food Stamp program (J.A. 16-25).[10]

[10] Appellees Blanca Martinez and her child, added as plaintiffs in Civil Action No. B-81-260, live with Martinez's parents (J.A. 31). According to Martinez's October 27, 1982 affidavit, the combined family group received food stamps as a single household (*id.* at 32). Appellees Sara Cortez and her children, also added as plaintiffs in Civil Action B-81-260, live with Cortez's parents (*id.* at 33). According to Cortez's

The district court did not act on the motion for class certification; however, it did consolidate the Castillos' suit with three similar actions brought by family groups alleging that the revised definition of the term "household" unconstitutionally denied them separate household status and attendant food stamp benefits.[11] The court then considered the constitutional challenge to 7 U.S.C. 2012(i) on cross motions for summary judgment. It ruled that Section 2012(i) violates equal protection principles of the Fifth Amendment's Due Process Clause by discriminating against family members and impermissibly burdening family decisions to live together (J.S. App. 1a-8a).

October 28, 1982, affidavit, the family group received food stamps as a single household (*id.* at 34). Appellees Elias Ruiz and his family, likewise added as plaintiffs in Civil Action B-81-260, live with Ruiz's mother (J.A. 35). Ruiz's February 27, 1984 affidavit does not indicate whether the family group received food stamps as a single household (see *id.* at 35-36).

[11] In Civil Action No. B-82-7, appellees Sylvia Nieto and her child live with Sylvia Nieto's parents (J.A. 37). Nieto's January 11, 1982 affidavit does not indicate whether the combined family group received food stamps as a single household (see *id.* at 37-38). In Civil Action No. B-82-21, appellees Robert Cody and his family live with Robert Cody's mother (J.A. 39, 41). According to Cody's January 22, 1982 affidavit, the combined family group received food stamps as a single household (*id.* at 40). In Civil Action No. B-83-106, appellees Cecilia Villafranca and her children live with Cecilia Villafranca's brother (J.A. 50). Their combined household income exceeds the food stamp eligibility requirements (J.S. App. 3a). Appellee Gregorio Alvarado and his family, also plaintiffs in Civil Action No. B-83-106, live with Alvarado's sister (J.A. 52). Alvarado's May 19, 1983 affidavit does not indicate whether the combined family group received food stamps as a single household (see *id.* at 52-53).

The district court recognized that a social welfare program may generally distinguish among benefit recipients provided that the distinctions do not " 'invidiously discriminate * * * on the basis of criteria which bear no rational relation to a legitimate legislative goal' " (J.S. App. 3a-4a, quoting *Weinberger* v. *Salfi*, 422 U.S. 749, 772 (1975)). And the court acknowledged that Section 2012(i), which was enacted to limit claims of separate household status among family members, "conforms to the 'rational basis' test as it is pronounced in *Salfi*" (J.S. App. 6a). However, the court stated that "a great amount of inconsistency surrounds *Salfi*," noting that "such a limitation does not apply to gender-based classifications" (J.S. App. 6a, citing *Califano* v. *Goldfarb*, 430 U.S. 199, 210-212 (1977)).

The district court therefore queried "whether family-based classifications are subject to such limitations" (J.S. App. 6a). It turned for guidance to *Moore* v. *City of East Cleveland*, 431 U.S. 494 (1977), and *Cleveland Board of Education* v. *LaFleur*, 414 U.S. 632 (1974). Relying on those cases, the court concluded that "[i]t is clear that family life-styles have been afforded a stricter standard of review than the 'rational basis' test as it is pronounced in *Salfi*" (J.S. App. 7a).

The district court attached "even greater importance" (J.S. App. 7a) to this Court's decision in *United States Department of Agriculture* v. *Moreno*, 413 U.S. 528 (1973). That decision held that a provision of the Food Stamp Act, denying benefits to cohabiting, unrelated individuals, was inconsistent with the Due Process Clause because it represented a "bare congressional desire to harm a politically unpopular group" (413 U.S. at 534). The district

court reasoned that "if the Supreme Court is willing to protect unpopular political groups it should even be more willing to protect the traditional family value of living together" (J.S. App. 8a).

The district court thus found that "[f]amily type classifications are clearly deserving of the judicial scrutiny that was applied in [*Goldfarb*]" (J.S. App. 7a). It concluded, without further analysis, that the provisions of Section 2012(i), limiting family member eligibility for separate household status, "are discriminatory and in violation of [appellees'] Fifth Amendment rights" (J.S. App. 8a). The court permanently enjoined enforcement of these provisions against appellees (*ibid.*).[12]

SUMMARY OF ARGUMENT

The district court has declared unconstitutional a carefully considered legislative initiative to correct widespread abuse in the Food Stamp program. The court's decision, by its own admission (J.S. App. 3a), departs from established equal protection jurisprudence. It employs heightened scrutiny to a social

[12] The district court granted relief based on appellees' affidavits, prepared as early as 1981, describing transient living situations and indicating an immediate need for food stamps (J.A. 26-42, 50-53). Thus, it is possible that appellees are no longer in need of the relief provided by the district court. However, appellees' counsel informs us that at least some of the appellees continue to live with parents, children, or siblings and continue to qualify for relief under the injunction. In all events, this dispute would not be mooted if appellees simply ceased receiving food stamp benefits. The injunction has not been vacated; furthermore, the Secretary may seek repayment of overissuances in the event that the court's decision is overturned (7 U.S.C. 2022). See *Firefighters Local Union No. 1784* v. *Stotts*, No. 82-206 (June 12, 1984), slip op. 5-9.

welfare classification that does not involve a "suspect" or "quasi-suspect" class, justifying its result through the unsupportable theory that Congress, in amending the definition of "household" contained in 7 U.S.C. 2012(i), has discriminated against families and impermissibly burdened their fundamental rights.

Congress amended Section 2012(i)'s definition of "household" in response to documented reports of widespread food stamp abuses. Congressional hearings, conducted in 1981 and 1982, revealed that individuals who lived together as a single household frequently claimed separate household status in order to receive increased food stamp benefits. Faced with the practical difficulties of verifying separate household status, Congress chose to refine the definition of "household" to prevent that abuse. Congress specified that when certain closely related persons—namely, parents and children, or siblings—live together, they shall be treated as a single household regardless of their claimed meal purchase and preparation habits. To ameliorate any hardship, Congress excepted elderly or disabled parents and siblings from this provision.

Section 2012(i)'s refined definition of "household" applies a rational distinction between groups composed of related and unrelated persons to combat a pervasive method of food stamp recipient abuse. Congress reasonably concluded that closely related family members, who are more likely to purchase and prepare meals together than unrelated persons, should be treated as a single household for purposes of the Food Stamp program. This classification advances legitimate government goals—preserving public confidence in the integrity of the Food Stamp

program and assuring optimal allocation of the government's limited public assistance resources—in a wholly reasonable manner. The definition, carefully tailored to meet specific congressional concerns, plainly withstands the "rational basis" scrutiny applicable to equal protection challenges to social welfare statutes.

The district court plainly erred in concluding that Section 2012(i) is subject to "heightened" equal protection scrutiny. Family members, the group subject to special treatment under the statute, do not constitute a "suspect" or "quasi-suspect" class. Furthermore, the statute does not burden any fundamental rights. Section 2012(i)'s distinction between households composed of related and unrelated persons does not have a direct and substantial impact on family living arrangements. Nor does it create an irrebuttable evidentiary presumption; instead, it employs legitimate eligibility criteria to achieve a legislative policy objective.

The district court's ultimate conclusion—that the Food Stamp program must apply the same limitations to family groups that it applies to groups of unrelated individuals—has the practical effect of ascribing constitutional status to a family member's decision to purchase food and prepare meals apart from the parents, children, or siblings with whom he lives. This result cannot be reconciled with equal protection principles or common sense; moreover, it represents a striking lack of deference to "the duly enacted and carefully considered decision of a coequal and representative branch of our Government." *Walters* v. *National Association of Radiation Survivors*, No. 84-571 (June 28, 1985), slip op. 13.

ARGUMENT

THE FOOD STAMP ACT'S DEFINITION OF "HOUSEHOLD" DOES NOT VIOLATE EQUAL PROTECTION PRINCIPLES OF THE FIFTH AMENDMENT'S DUE PROCESS CLAUSE

A. The Household Definition Distinguishes Between Groups Composed Of Family Members And Groups Composed Of Unrelated Persons Based On Rational Considerations That Advance Legitimate Governmental Interests

Equal protection principles generally require that legislation accord like treatment to similarly situated individuals. See, *e.g.*, *City of Cleburne* v. *Cleburne Living Center, Inc.*, No. 84-468 (July 1, 1985), slip op. 6; *Plyler* v. *Doe*, 457 U.S. 202, 216 (1982). But the precept of equal protection does not preclude legislators from making rational distinctions. *Plyler*, 457 U.S. at 216. "A legislature must have substantial latitude to establish classifications that roughly approximate the nature of the problem perceived, that accommodate competing concerns both public and private, and that account for limitations on the practical ability of [government] to remedy every ill." *Ibid.*; accord *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970). In assessing an equal protection challenge, therefore, the judiciary must give broad deference to the lines drawn by Congress, "the appropriate representative body through which the public makes democratic choices among alternative solutions to social and economic problems." *Schweiker* v. *Wilson*, 450 U.S. 221, 230 (1981). "If the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals, then the action of Congress is not so arbitrary as to violate the Due Process Clause of the Fifth Amend-

ment." *Richardson* v. *Belcher*, 404 U.S. 78, 84 (1971). These principles, applied to the present case, confirm that Congress acted well within its powers in amending the Food Stamp Act's definition of the term "household."

The Food Stamp Act is a central component of federal social welfare legislation, providing essential benefits to needy households. However, as noted above, the massive growth in the government's food stamp expenditures has prompted serious public concern over the size, effectiveness, and integrity of the Food Stamp program. Congress, in response, conducted extensive oversight hearings in 1981 and 1982, which revealed a pressing need to combat widespread fraud and recipient abuse.[13] In particular, Congress received reports from federal, state, and local administrators that the Food Stamp Act's definition of "household," set forth in 7 U.S.C. 2012(i), was frequently subject to manipulation.[14] Congress found that it had to deal

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[13] See generally *1982 House Hearings*; *1981 Senate Hearings*; *1981 House Hearing*.

[14] See, *e.g.*, S. Rep. 97-504, 97th Cong., 2d Sess. 25 (1982) ("tightening of the household definition was the leading recommendation for change made in response to a recent survey by the [Senate Committee on Agriculture, Nutrition, and Forestry]"); *id.* at 26 ("[h]ousehold size has consistently been determined to be the second most likely source of recipient fraud resulting in overissuances; income is first"); H.R. Rep. 97-687, 97th Cong., 2d Sess. 25 (1982) (revision of the household definition was among "the suggestions made by State program administrations, officials from the General Accounting Office, and the Department [of Agriculture]'s Inspector General"); S. Rep. 97-128, *supra*, at 32 ("[t]hese current practices of artificially splitting households is [*sic*] an abuse which has been reported frequently to the [Senate Committee on Agriculture, Nutrition, and Forestry] in correspondence from local and State administrators"); *1982*

with the practice of individuals who live together but feign separate household status in order to obtain food stamp benefits to which they would not otherwise be entitled. See H.R. Rep. 97-106, 97th Cong., 1st Sess. 119 (1981); S. Rep. 97-128, 97th Cong., 1st Sess. 31 (1981).

In remedying this abuse, Congress was confronted with a serious practical problem. There is simply no effective means of efficiently determining whether persons who live together are falsely claiming separate household status.[15] The inherent difficulty of verifying whether persons are preparing meals separately or together renders individual determinations virtually impossible. Any meaningful enforcement scheme would require huge commitments of investigative resources to determine meal purchasing and prepara-

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House Hearings 45 ("[t]he vast majority of overissuances and underissuances for this $10.6 billion program stem from errors in determining correct income, assets, and household size") (statement of Henry Eschwege, Director, Community and Economic Development Division, General Accounting Office); *1981 Senate Hearings* 31-32, 42, 305-306, 308, 310-311 (testimony and prepared statements of S.L. Puett, Commissioner, Tennessee Department of Human Services).

[15] As a spokesman for the General Accounting Office observed, "[i]t is very difficult to verify separate household status for people living together." *1982 House Hearings* 47 (statement of Henry Eschwege, Director, Community and Economic Development Division). Individual determinations are impractical because, as a Texas food stamp fraud investigator explained, "[t]he complexity of the program works to the advantage of those determined to abuse it." *1981 Senate Hearings* 52 (statement of E. Richards, Investigator General, Texas Department of Human Resources). The very size of the program prevents individual investigations. *Id.* at 51 (noting an investigation backlog of 10,000 cases in Texas alone).

tion habits. Indeed, an effective program might require rather elaborate, and perhaps intrusive, surveillance and verification of personal activities.

Congress therefore elected to redefine the term "household" to prevent the documented abuses. No doubt, Congress could have prohibited *all* groups of individuals who live together from claiming separate household status for food stamp purposes. Indeed, it considered that solution. See S. Rep. 97-504, 97th Cong., 2d Sess. 24-25, 87-88 (1982). But Congress, instead, carefully redefined "household" to prevent only certain closely related family members from claiming separate household status. Congress recognized that those persons were most likely to purchase food and prepare meals together and were most conveniently situated to submit fraudulent claims of separate household eligibility.

Congress based its revision on an unremarkable observation of human experience—family members, bound together by close and lasting emotional ties, are more likely to share resources and responsibilities than unrelated persons whose communality is based on financial convenience. That observation seems particularly true with respect to parents who live with their children and siblings who live with each other. Thus, Congress determined that when those family members live together and receive food stamps, they should be precluded from claiming separate household status because their claims are more likely to be fraudulent.

At the same time, Congress was not insensitive to the needs of food stamp recipients. It specifically emphasized that the new provisions would "not disqualify legitimately poor households that apply as a single family unit, but merely require that family

units apply as single households, rather than splintering for the purpose of receiving higher benefits." S. Rep. 97-128, *supra*, at 32. Moreover, the provisions were carefully tailored to exclude the disabled and the elderly from the single household requirement, assuring that "those parents most likely to reside with their children, but who truly maintain separate household status, will not be barred from participation as separate households." *Ibid.*; see H.R. Rep. 97-687, 97th Cong., 2d Sess. 105 (1982). As the extensive legislative history demonstrates, the refined definition of "household" was the product of a conscientious and thorough deliberative process.[16]

Section 2012(i)'s amended definition of "household" is plainly consistent with the equal protection principles of the Due Process Clause. In particular, Section 2012(i) withstands scrutiny under the "rational basis" test applicable to public welfare programs set forth in *Weinberger* v. *Salfi*, 422 U.S. 749, 772 (1975). In *Salfi*, this Court rejected a constitutional challenge to provisions of the Social Security Act, 42 U.S.C. (1970 ed. & Supp. III) 416(c)(5) and (e)(2), that imposed a nine-month duration-of-relationship requirement for survivor's benefits. 422 U.S. at 767-785. The Court stated (*id.* at 777):

> The question is whether Congress, its concern having been reasonably aroused by the possibility of an abuse which it legitimately desired to avoid, could rationally have concluded both that a particular limitation or qualification would pro-

[16] See H.R. Conf. Rep. 97-759, *supra*, at 62-63; S. Rep. 97-504, *supra*, at 24-27, 87-88, 111, 119; H.R. Rep. 97-687, *supra*, at 25, 75-76, 83-84, 105; S. Rep. 97-139, *supra*, at 52-53; S. Rep. 97-128, *supra*, at 31-32; H.R. Rep. 97-106, *supra*, at 118-119.

> tect against its occurrence, and that the expense and other difficulties of individual determinations justified the inherent imprecision of a prophylactic rule. We conclude that the duration-of-relationship test meets this constitutional standard.

This "rational basis" test, repeatedly applied by this Court in rejecting equal protection attacks on social welfare legislation, controls the present case.[17]

As in *Salfi*, Congress was faced with the "administrative difficulties of individual eligibility determinations" (422 U.S. at 784). It responded by establishing a definition of "household" that would "eliminate the potential for this type of program abuse." H.R. Rep. 97-106, *supra*, at 119; see also S. Rep. 97-128, *supra*, at 32. The modifications to the previous "household" definition represent Congress's legitimate

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[17] See *e.g.*, *Schweiker* v. *Hogan*, 457 U.S. 569, 588-593 (1982) (rejecting an equal protection challenge to federal limitations that result in higher Medicaid benefits to recipients of Supplemental Security Income (SSI) than to persons who are self-supporting); *Schweiker* v. *Wilson*, 450 U.S. at 230-239 (rejecting an equal protection challenge to a federal limitation on SSI eligibility that provides benefits only to residents in public institutions who receive Medicaid funds for their care); *Califano* v. *Aznavorian*, 439 U.S. 170, 174-178 (1978) (rejecting an equal protection challenge to federal limitations on payment of SSI benefits to persons who reside outside the United States for a period greater than 30 days); *Mathews* v. *DeCastro*, 429 U.S. 181 (1976) (rejecting an equal protection challenge to a federal limitation on payment of Social Security benefits to the divorced wives of retirees); *Mathews* v. *Lucas*, 427 U.S. 495, 503-516 (1976) (rejecting an equal protection challenge to a federal limitation on payment of Social Security benefits to surviving illegitimate children who are unable to establish dependency on the putative parent).

policy determination that the Food Stamp program, and its millions of beneficiaries, would benefit from a definition of "household" that prevents fraudulent claims. See *Salfi*, 422 U.S. at 784. Congress rationally concluded "that generalized rules were appropriate to its purposes and concerns" and "that the difficulties of individual determinations outweigh the marginal increments in the precise effectuation of congressional concern which they might be expected to produce" (*id.* at 785).

Section 2012(i) imposes a reasonable prophylactic rule that prevents the unjust distribution of food stamp benefits resulting from recipient abuse. As in the case of any statutory provision, there might be room to debate the legislature's ultimate policy perspective. But that does not determine the constitutional question. See *United States Railroad Retirement Board* v. *Fritz*, 449 U.S. 166, 176 (1980); *Jefferson* v. *Hackney*, 406 U.S. 535, 549 (1972); *Dandridge* v. *Williams*, 397 U.S. at 487. The different treatment that Section 2012(i) accords to family members advances a legitimate government interest—preserving the integrity of benefit distributions—in a way that cannot be described as "patently arbitrary or irrational." *Fritz*, 449 U.S. at 177 (1980); see also, *e.g.*, *Richardson* v. *Belcher*, 404 U.S. at 84; *Flemming* v. *Nestor*, 363 U.S. 603, 611 (1960).[18]

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[18] Congress quite reasonably chose "to avoid the burden and expense of specific case-by-case determination." *Mathews* v. *Lucas*, 427 U.S. 495, 509 (1976). Nonetheless, it attempted to tailor its definition of "household," to the extent possible, to minimize hardships on particular family arrangements. For example, Congress provided specific exceptions from the household definition for the elderly and the disabled. Even these exceptions may, of course, "leave some comparatively needy person outside the favored circle" (*Schweiker* v. *Wilson*,

Thus, Section 2012(i) plainly withstands "rational basis" scrutiny. *Steinberg* v. *United States Department of Agriculture*, 613 F. Supp. 432, 435 (E.D.N.Y. 1984), aff'd, No. 85-6028 (2d Cir. July 16, 1985) (unpublished order), petition for cert. pending, No. 85-5624 (filed Oct. 10, 1985); *Levesque* v. *Block*, No. C82-437-L (D.N.H. Jan. 26, 1983), slip op. 7-8, aff'd in part on other grounds, 723 F.2d 175 (1st Cir. 1983).

B. The Household Definition Is Not Subject To Heightened Equal Protection Scrutiny

The district court acknowledged (J.S. App. 6a) that Section 2012(i) "conforms to the 'rational basis' test as it is pronounced in *Salfi*." The court should have ended its inquiry upon that conclusion. Instead, it discerned a need for heightened scrutiny. The court's analysis plainly strays from firmly-established equal protection principles. A legislative choice is subject to heightened scrutiny only if it "employs a classification that is inherently invidious or that

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450 U.S. at 238). But that result is inevitable in the course of legislative line-drawing:

> "Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark."

Id. at 239 n.23 (quoting *Louisville Gas & Electric Co.* v. *Coleman*, 277 U.S. 32, 41 (1928) (Holmes, J., dissenting)). See also, *e.g.*, *United States Railroad Retirement Board* v. *Fritz*, 449 U.S. at 176; *Jefferson* v. *Hackney*, 406 U.S. at 549; *Dandridge* v. *Williams*, 397 U.S. at 487.

impinges on fundamental rights." *Schweiker* v. *Wilson*, 450 U.S. at 230.[19] Section 2012(i)'s treatment of certain family members who live together as a single household fits neither of these categories.

Family members plainly do not represent a "suspect" or "quasi-suspect" class.[20] They fall far short of even the most minimal requirements for that characterization. See, *e.g.*, *City of Cleburne* v. *Cleburne Living Center, Inc.*, No. 84-468 (July 1, 1985), slip op. 6-13 (declining to recognize the mentally retarded as a "quasi-suspect" class). Family members have not been subject to historic discrimination, they do not exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group, and they are neither a minority nor a politically powerless segment of society. See, *e.g.*, *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307, 313 (1976) (per curiam). To the contrary, families have traditionally received favored status in American cultural and political processes.[21] Like-

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[19] See, *e.g.*, *Plyler* v. *Doe*, 457 U.S. at 216-217; *City of New Orleans* v. *Dukes*, 427 U.S. 297, 303 (1976) (per curiam); *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307, 312 (1976) (per curiam); *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 17 (1973).

[20] The district court suggested (J.S. App. 6a), without clear explanation, that this Court's decision in *Califano* v. *Goldfarb*, 430 U.S. 199 (1977), recognizing gender as a "quasi-suspect" classification, justified heightened scrutiny in the present case. Appellees, however, have not contended that family members are subject to invidious class discrimination. See Mot. to Dis. 7-13.

[21] See generally Hafen, *The Constitutional Status of Marriage, Kinship, and Sexual Privacy—Balancing the Individual and Social Interests*, 81 Mich. L. Rev. 463 (1983).

wise, members of low-income families—the sub-group served by the Food Stamp program—do not meet suspect class requirements. The inclusion of poverty as an additional class characteristic does not change the constitutional calculus. See *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1 (1973).

Furthermore, this case does not involve fundamental rights. Contrary to appellees' contentions (Mot. to Dis. 7-9) Section 2012(i) does not create a classification system that infringes a "fundamental right" of food stamp recipients to make choices concerning family living arrangements. This Court has held that certain family-based decisions do enjoy constitutionally protected status.[22] When the government seriously intrudes on basic choices concerning the composition of the marriage or family unit, the Court has "examine[d] carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation." *Moore* v. *City of East Cleveland*, 431 U.S. 494, 499 (1977). But such scrutiny has been applied only when the government regulation, at a minimum, "directly and substantially" interferes with family choices. *Zablocki* v. *Redhail*, 434 U.S. 374, 386-387 & n.12 (1978); see *id.* at 403-404 (Stevens, J., concurring); *Califano* v. *Jobst*, 434 U.S. 47, 58 (1977).

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[22] For example, the right to marry and have children receives special constitutional protection. See, *e.g.*, *Cleveland Board of Education* v. *LaFleur*, 414 U.S. 632, 639-640 (1974) (invalidating oppressively restrictive maternity leave regulations); *Loving* v. *Virginia*, 388 U.S. 1, 12 (1967) (invalidating a state statute banning interracial marriage).

Unlike the zoning provisions at issue in *Moore*, which prohibited a grandmother from living together with her grandchild, or the statute in *Zablocki*, which provided that members of a certain class could not marry, Section 2012(i) does not have a direct and substantial impact upon family living arrangements. Section 2012(i) does not prevent any group of persons, related or unrelated, from living or dining together. Its definition of "household" merely reflects a congressional determination, concededly rational, that closely related persons who live together should receive food stamp benefits based on the economic needs of a single household that purchases food and prepares meals together. Section 2012(i) ensures that the amount of a family's food stamp entitlement reflects the economies of scale that a family can enjoy in jointly purchasing and preparing meals. The statute simply adjusts food stamp benefits in light of the cooperative arrangements that families can generally employ; it does not amount to a constitutionally significant intrusion on family living arrangements. See *Steinberg* v. *United States Department of Agriculture*, 613 F. Supp. at 435.

Indeed, Section 2012(i)'s impact on family living arrangements is no different from that of a broad variety of other legislative provisions that consider family status in allocating financial burdens and benefits. For example, the Internal Revenue Code determines individual income tax liability on the basis of marital, family, and dependent relationships. See *e.g.*, 26 U.S.C. 1-2. Similarly, an individual's eligibility for federally subsidized educational assistance is frequently determined on the basis of his family's financial resources. See, *e.g.*, 20 U.S.C. 1089. And, of course, other welfare programs, such

as Aid to Families with Dependent Children and Medicaid, provide assistance according to family-based criteria. See 42 U.S.C. 601 *et seq.*; 42 U.S.C. 1396 *et seq.*; *Schweiker* v. *Gray Panthers*, 453 U.S. 34, 48 (1981). As these examples indicate, federal law routinely allocates financial burdens and benefits through general rules that utilize family status as indicia of financial resources and need. There is nothing novel—much less unconstitutional—in Section 2012(i)'s use of rational, family-based criteria in determining Food Stamp eligibility and benefit levels.

Admittedly, Section 2012(i) may encourage families to take advantage of the savings available in joint meal purchase and preparation; by the same token, it may discourage family members from purchasing food and preparing meals separate and apart from the parents, children, or siblings with whom they live. But these limitations on the "right" to dine separately hardly amount to the kind of interference with family relationships that this Court has found constitutionally significant. See *Zablocki* v. *Redhail*, 434 U.S. at 386-387 ("reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed"); *Califano* v. *Jobst*, 434 U.S. at 58 (Social Security provisions terminating a child's benefits upon marriage do not violate equal protection principles even though they "may have an impact on [the child's] desire to marry, and may make some suitors less welcome than others.").

In particular, Section 2012(i) does not disrupt family bonds by preventing—or even discouraging—closely related individuals from living together. Section 2012(i)'s definition of "household" restricts a family's food stamp entitlement in only one respect:

it measures the entitlement in light of the economies of scale derived from joint food purchase and preparation. Thus, Section 2012(i) may provide family members with an increased incentive to reap these economies by buying food and preparing meals together; however, it generally provides no incentive to live apart simply to collect increased food stamp allotments, because the separate living arrangements would impose a corresponding increase in food preparation costs. Even in those limited instances where it could conceivably create such an incentive, the result cannot reasonably be characterized as an intrusion on the family unit.[23]

Likewise, Section 2012(i) does not impair a fundamental liberty simply because it denies increased benefits to family members who claim to maintain separate households under one roof. Congress has no obligation to underwrite the full range of possible family living arrangements. Even where the Due

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[23] We perceive only one situation in which Section 2012(i)'s "household" definition might theoretically encourage family members to live apart. In some circumstances, a family that is ineligible for food stamp benefits based on its combined household income might become eligible if the individual members lived apart and applied for benefits separately. It appears doubtful that family members would choose to live separately simply to qualify for food stamps; the increased cost of separate housing would almost certainly exceed the value of the food stamp benefits. Nonetheless, family members intent upon receiving food stamps might conceivably adjust their living arrangements to satisfy the eligibility criteria. The availability of that option, however, does not constitute government impairment of any fundamental family right. The government does not intrude upon family relationships simply because family members with combined income in excess of public welfare eligibility requirements may choose to adjust their lifestyles to qualify for welfare benefits.

Process Clause has been held to "protect against unwarranted government interference with freedom of choice in the context of certain personal decisions, it does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom." *Harris* v. *McRae*, 448 U.S. 297, 317-318 (1980); see *Maher* v. *Roe*, 432 U.S. 464, 473-474 (1977). Family members may sincerely desire to share the same living quarters while purchasing food and preparing meals separately; however, the public is not obligated to subsidize that unconventional choice. Congress certainly can create a financial incentive for family members to purchase food and prepare meals together without disturbing a family member's "range of choices" concerning family living arrangements. See *McRae*, 448 U.S. at 316-318; *Maher*, 432 U.S. at 474.[24]

The district court and appellees have suggested other insubstantial grounds for heightened scrutiny. The district court maintained (J.S. App. 7a) that heightened scrutiny was required by this Court's decision in *United States Department of Agriculture* v. *Moreno*, 413 U.S. 528 (1973). In *Moreno*, the Court applied equal protection principles to invalidate provisions of the Food Stamp Act that excluded benefits to households composed of unrelated persons. Examining the scant legislative history behind that exemption, the Court concluded that the provisions

[24] By the same token, Section 2012(i) does not infringe the constitutional rights of family members, presently living apart and receiving food stamp benefits, who wish to live together and preserve the same benefit level. At bottom, these family members are simply demanding "a constitutional entitlement to the financial resources to avail [themselves] of the full range of protected choices." *McRae*, 448 U.S. at 316.

had no purpose other than "a bare congressional desire to harm a politically unpopular group." 413 U.S. at 534. However, the Court clearly employed "rational basis" scrutiny to reach that result. *Id.* at 532-534. Thus, *Moreno* offers no support for applying heightened scrutiny to the present case.[25]

Appellees, relying on *Plyler* v. *Doe*, 457 U.S. 202 (1982), argue (Mot. to Dis. 11) that "[e]ven if the government does not interfere with the [appellees'] right to live with closely related individuals, this Court should look at the deprivation of food with heightened scrutiny." This argument—not made below—is frivolous. Section 2012(i) set forth a condition on food stamp eligibility and benefits; it does not prevent appellees from pursuing alternatives, other than food stamps, for obtaining food. Appellees do not have an inherent fundamental right to federal food purchasing assistance. Neither *Plyler* nor any other decision of this Court supports that proposition. See *McRae*, 448 U.S. at 316.

Plyler addressed a state statute that completely denied a public education to the children of undocumented aliens. This Court stated that the case raised unique concerns because education, while not a fundamental right, "has a fundamental role in maintaining the fabric of our society." 457 U.S.

[25] The district court also misconstrued *Moreno* in concluding that the decision would preclude food stamp benefit limitations even in the absence of "a congressional pronouncement of a desire to harm" (J.S. App. 8a). *Moreno* clearly turned on a finding that Congress's sole reason for enacting the challenged legislation was its desire to disadvantage a "politically unpopular group," rather than to serve a legitimate government interest. 413 U.S. at 534. Thus, contrary to the district court's statement, Congress's motivation was critical to the Court's conclusion. See *Mathews* v. *Diaz*, 426 U.S. 67, 87 (1976); *Levesque* v. *Block*, slip op. 5-7.

at 221. It noted that "'education is perhaps the most important function of state and local governments.'" *Id.* at 222 (quoting *Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954)). The Court further observed that "denial of an education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit." 457 U.S. at 221-222. The Court specifically stated that public education is not "some governmental 'benefit' indistinguishable from other forms of social welfare legislation." *Id.* at 221.

Food stamps have none of the distinctive attributes of public education. Instead, as appellees concede (Mot. to Dis. 12), they are a standard form of social welfare payment, providing the needy with direct funds for the limited purpose of purchasing food items. Like other social welfare programs, the Food Stamp program is subject to recipient fraud and abuse. The revised definition of "household" represents a legitimate classification designed to preserve the integrity of the food stamp system. Classifications of this type, familiar to all social welfare programs, are not subject to heightened scrutiny. See *Plyler*, 457 U.S. at 216; *Weinberger* v. *Salfi*, 422 U.S. at 776-777.

Appellees' intimation (Mot. to Dis. 7, 8, 13) that Section 2012(i) creates an unconstitutional irrebuttable presumption is also insubstantial. As this Court has made clear, legislation that satisfies equal protection requirements "'is perforce consistent with the due process requirement of the Fifth Amendment.'" *Salfi*, 422 U.S. at 770 (quoting *Richardson* v. *Belcher*, 404 U.S. at 81). In any event, Section 2012(i) does

not create an evidentiary presumption; rather, it is a legitimate legislative classification. See *Salfi*, 422 U.S. at 771-772. Section 2012(i) "does not purport to speak in terms of the bona fides" of the family members' household status and "then make plainly relevant evidence of such bona fides inadmissible." 422 U.S. at 772. Instead, it provides that "benefits * * * are available upon compliance with an objective criterion, one which the Legislature considered to bear a sufficiently close nexus with underlying policy objectives to be used as the test for eligibility." *Ibid.*

In sum, Section 2012(i) does not establish a legislative classification requiring heightened equal protection scrutiny. Rather, it represents a considered legislative initiative designed to improve the operation of a social welfare program. The question, therefore, is whether Section 2012(i) is rationally related to a legitimate governmental objective. As the district court acknowledged (J.S. App. 6a), the statute easily meets the "rational basis" test.[26]

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[26] Although the Court need not reach the issue, we believe Section 2012(i) would withstand the "intermediate" level of scrutiny that the district court mistakenly required. The sheer magnitude of food stamp fraud and the impossibility of policing it on a case-by-case basis provide "an exceedingly persuasive justification" for redefining the term "household" to prevent widespread systematic abuses. Cf. *Heckler* v. *Mathews*, No. 82-1050 (Mar. 5, 1984), slip op. 19. Likewise, the judicious deliberation and weighing of competing interests that accompanied the redefinition indicates that the changes were "plainly adopted 'through reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions.'" *Mathews*, slip op. 20 (quoting *Mississippi University for Women* v. *Hogan*, 458 U.S. 718, 726 (1982)). Thus, Section 2012(i)'s definition of "household" is substantially related to important government objectives.

C. The Judgment Of Congress On Questions Of Social Welfare Policy Is Entitled To Deference From The Courts

When judging the constitutionality of a federal statute, this Court gives significant deference "to the duly enacted and carefully considered decision of a coequal and representative branch of our Government." *Walters* v. *National Association of Radiation Survivors*, No. 84-571 (June 28, 1985), slip op. 13. In particular, "[t]his Court has granted a 'strong presumption of constitutionality' to legislation conferring monetary benefits, *Mathews* v. *DeCastro*, 429 U.S., at 185, because it believes that Congress should have discretion in deciding how to expend necessarily limited resources." *Schweiker* v. *Wilson*, 450 U.S. at 238. Accord *Schweiker* v. *Hogan*, 457 U.S. 569, 591 n.32 (1982). Appellees nonetheless urge this Court to declare Section 2012(i)'s definition of "household" unconstitutional largely on public policy grounds.

Appellees suggest (Mot. to Dis. 9-11), for example, that families receiving food stamps may be unable to employ the cooperative meal preparation envisioned by Section 2012(i) because of working schedules, health problems and small cooking and dining facilities. They argue (Mot. to Dis. 10-11) that food stamp recipients are likely to suffer from communicable disease or require special diets and, therefore, may be precluded from eating together. They also assert (*id.* at 12) that Section 2012(i)'s household definition has an especially harsh impact on children of low-income families.

Appellees' arguments are debatable. But whatever their merit, they "are addressed to an inappropriate forum" (*United Steelworkers* v. *Bouligny, Inc.*, 382 U.S. 145, 150 (1965)). See, *e.g.*, *Hogan*, 457 U.S. at

590-592; *Wilson*, 450 U.S. at 238-239. Congress, rather than the judiciary, is charged with establishing the Food Stamp program's eligibility requirements and benefit levels, and the courts "do not sit to pass on policy or the wisdom of the course Congress has set." *Heckler* v. *Turner*, No. 83-1097 (Feb. 27, 1985), slip op. 27. "The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely [the Court] may think a political branch has acted." *Vance* v. *Bradley*, 440 U.S. 93, 97 (1979).

Section 2012(i)'s refined definition of "household" represents an important congressional initiative to reduce fraud in the Food Stamp program. It responds to documented abuses, "plac[ing] a reasonable control on a situation that State and local administrators have identified as * * * requir[ing] congressional action." S. Rep. 97-504, 97th Cong., 2d Sess. 25 (1982). If the district court's invalidation of Section 2012(i) is permitted to stand, millions of dollars in food stamp benefits will ultimately be paid to the undeserving, reducing public confidence in the integrity of welfare distributions and diverting the Nation's limited resources from the truly needy to those who choose to abuse the Food Stamp program.

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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APPELLEE'S

BRIEF

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No. 85-250

In The
Supreme Court of the United States
October Term, 1985

JOHN R. BLOCK, SECRETARY OF AGRICULTURE,
Appellant

v.

NATIVIDAD CASTILLO, ET AL.
Appellees.

ON APPEAL FROM THE UNTED STATES DISTRICT COURT

BRIEF FOR THE APPELLEES

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QUESTION PRESENTED

Whether the part of 7 U.S.C. 2012(i), which states, "that parents and children, or siblings, who live together shall be treated as a group of individuals who customarily purchase and prepare meals together for consumption even if they do not do so" discriminates against the Plaintiffs by violating their Fifth Amendment rights.

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No. 85-250

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ON APPEAL FROM THE UNTED STATES DISTRICT COURT

BRIEF FOR THE APPELLEES

STATUTORY PROVISION INVOLVED

Section 3(i) of the Food Stamp Act of 1964, 7 U.S.C. 2012(i), provides in pertinent part:

> "Household" means (1) an individual who lives alone or who, while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others, or (2) a group of individuals who live together and customarily purchase food and prepare meals together for home consumption; except that parents and children, or siblings, who live together shall be treated as a group of individuals who customarily purchase and prepare

meals together for home consumption even if they do not do so, unless one of the parents, or siblings, is an elderly or disabled member.

———o———

STATEMENT

The Food Stamp Program

The food stamp program was established by the Food Stamp Act of 1964. 7 U.S.C. 2011 *et seq.* Congress sought through it to accomplish the dual purpose of "maintaining adequate levels of nutrition . . . " among the nation's poor and "strengthen[ing] the nation's agricultural economy . . . ." *Id.* At the heart of the Congressional intent was a finding "that the limited food purchasing power of low income households contributes to hunger and malnutrition among such households." *Id.*

In order to economically and effectively administer this ambitious undertaking, Congress decided that the distribution of the stamps should be keyed to a so called "thrifty food plan". 7 U.S.C. 2017. This is the least costly of four basic food plans developed by the Department of Agriculture. The thrifty food plan is based upon the amount of food necessary to be consumed by males and females of different ages so as to meet minimum dietary standards.[1] The cost of the plan is derived from the re-

1. Staff of the Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition of the House Committee on Agriculture, 99th Cong., 1st Sess., *A Review of the Thrifty Food Plan and Its Use in the Food Stamp Program* (Comm. Print

(Continued on following page)

quirements of a family of four. 7 U.S.C. 2012 (o). The statute directs the Secretary of Agriculture to make "household size adjustments taking into account economies of scale." *Id.*[2]

At present, the thrifty food plan entitles a one-member household to a maximum food stamp allotment of 88¢ (cents) per meal. The four-member household, in recognition of the economies of scale, is entitled to 74¢ (cents) per meal per individual. That is $2.96 per family of four per meal. An eight member family, in further recognition of the economies of scale, receives 67¢ (cents) per person per meal or just over $5.00 per meal per family. Although these benefits are updated annually, the formula used causes "food stamp benefits to lag 3 to 15 months behind the actual cost of the thrifty food plan." See *Review of the Thrifty Food Plan* at page 17 cited completely in footnote 1.

Food stamps have traditionally been distributed on the basis of a household. As initially enacted, 7 U.S.C. 2012 (e) defined a "household" as a group of related or non-related individuals, who are not residents of an institution or boarding house, but are living as one economic unit sharing common cooking facilities and for whom food

(Continued from previous page)

1985) hereinafter cited as *Review of the Thrifty Food Plan.* See also the criticism of the thrifty food plan concerning those who are in need but not eligible in *Hunger in America,* Physicians Task Force on Hunger in America, Harvard University School of Public Health, at 138, 139 (1985) hereinafter cited as *Hunger in America; Hunger Counties 1986 The Distribution of America's High Risk Areas,* Physicians Task Force on Hunger in America, Harvard University School of Public Health at 7, 9, and 11.

2. *Review of the Thrifty Food Plan,* at 18 cited supra in note 1.

is customarily purchased in common." In 1971, Congress redefined the term "household" so as to include only groups of related individuals. Act of January 11, 1971, Pub. L. 91-671 § 2a 84 Stat. 2048. The distinction was stricken by this Court as irrelevant to the stated purposes of the Food Stamp Act and not rationally furthering any other legitimate governmental interest. In practical operation, the Court found that the distinction excluded *not just* those persons who were "likely to abuse the program," but "only those who so desperately needed aid that they could not alter their living arrangements so as to retain their eligibility." *United States Department of Agriculture v. Moreno,* 413 U.S. 528, 538 (1973).

In 1977, Congress again amended the definition of household requiring that groups of individuals, related or unrelated, who customarily purchase and prepare food together, be treated as a single household. 7 U.S.C. (Supp. I 1977) 2012 (i).

In 1981, Congress further modified the term "household" by providing that parents and children who live under the same roof shall comprise a single household for food stamp purposes regardless of whether they purchase and prepare meals separately and regardless of whether they are even able to do so. The only exception to this irrebutable presumption was a situation where the parent was over the age of 60. 7 U.S.C. (Supp. V 1981) 2012 (i). Thereafter, in 1982, siblings who lived under the same roof were included along with parents. 7 U.S.C. 2012 (i).

The Appellees, Natividad Castillo, his wife Petra and several others, Plaintiffs below, challenged that part of 7 U.S.C. 2012(i), which states "that parents and children, or siblings who live together shall be treated as a group

of individuals who customarily purchase and prepare meals together for home consumption even if they do not do so." Seven U.S.C. 2012(i) defines "household" for the determination of food stamp eligibility as an individual or group of individuals living together "who customarily purchase food and prepare meals together for home consumption." 7 U.S.C. 2012(i). Unrelated individuals who also live together may show that they maintain separate households and receive a food stamp allotment based on their separate household status. 7 U.S.C. 2012 (i). However, when adult siblings live together or with their parents, they are determined to be a single household regardless of their circumstances. The only exception is when one or more of the family members living together is elderly (60 years of age or older) or disabled. 7 U.S.C. 2012(i).

The result of this special "family rule" is to attribute the income of one family to the other even if that income is not actually available to both families. Thus, an irrebutable presumption is established that these related individuals comprise one household. The "family rule" either totally deprives them of or reduces their food stamp allotment 7 U.S.C. 2014(a). This is true even though circumstances in a poverty level household frequently make joint preparation of food an absolute impossibility.

Procedural History

This case was originally filed on October 7, 1981 as a class action[3] by Natividad Castillo and his wife Petra Sosa

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3. The class was defined as "all persons in Cameron County, [Texas] who have been or will be disqualified from certification for the Food Stamp Program because of the definition of household contained in 46 Fed. Reg. 44712, 44722 (1981) or who are disqualified because of the Defendants' interpretation of said definition as part of the regulation."

de Castillo against Marlin Johnston, Director of the Texas Department of Human Resources and other state employees acting under his direction and control. (J.A. 1, R. 1). Johnston is the state official responsible for the administration and implementation of the food stamp program in Texas. In support of the request for a Temporary Restraining Order, the Complaint included the affidavits of Petra Sosa de Castillo and her attorney. The affidavits established that the Castillos had been denied separate household status in their application for food stamps even though they did not combine their resources with their stepdaughter's family. (J.A. 26-30). Without further evidence, the Temporary Restraining Order was granted on October 9, 1981 and a hearing on the request for a Preliminary Injunction was set for October 16, 1981. (J.A. 1, 54-55). On October 19, 1981, the Castillos filed an Amended Complaint adding the defendant John Block, the then Secretary of Agriculture. (J.A. 1, R. 10). On that same day Castillos filed their Brief and Motion to Certify Class. (J.A. 2, R. 11-12).

A joint agreed motion for extension of the T.R.O. without hearing was filed by the original plaintiffs and defendants on October 30, 1981 (J.A. 2, R. 13). In this motion, the parties specifically waived a hearing on the preliminary injunction and agreed rather to submit briefs on that question. (J.A. 2, R. 13). The original answer of the state defendants was filed on November 13, 1981. In it, the state defendants pointed out that the federal defendants had not yet responded and suggested that the district court delay any action pending the federal answer. (J.A. 2, R. 14).

The state defendant's brief in opposition to the request for a preliminary injunction was filed on November

19, 1981. (J.A. 2, R. 15). On December 1, 1981, the Castillos filed a motion for summary judgment as well as a brief in support thereof and in the alternative in further support of the request for a preliminary injunction together with a brief in response to the brief of the state defendants. (J.A. 2, R. 16-18).

Thereafter three additional and similar suits (*Cody et al.* J.A. 11; *Nieto et al.* J.A. 9; and *Villafranca et al.* J.A. 12) were filed and the district court granted virtually identical temporary restraining orders. (J.A. 9 *Nieto* R. 1-11; J.A. 11, *Cody* R. 1-11; J.A. 12, *Villafranca* R. 1-10). In each situation Secretary Block moved to consolidate the new suits with the *Castillo* case. Without objection these motions were granted by the district court. (J.A. 2, R. 27, 28; J.A. 7, R. 67). During the course of the litigation, the complaint was amended and several additional parties were added. In each situation, the new plaintiffs were also granted similar temporary restraining orders. (J.A. 4, R. 46, 47; J.A. 5, R. 59-60). The basis for granting of the temporary restraining orders for each of these additional parties were their respective affidavits. (J.A. 31, 33, 35, 37, 39, 41, 50, and 52).

Although hearings on the requests for the preliminary injunctions were set to be held shortly after the grant of the TROs, in each of the situations, the parties jointly moved to continue the hearings and agreed to an extension of the temporary restraining orders. (J.A. 3, R. 28; J.A. 10, *Nieto* R. 17). It was also agreed that a hearing on the request for a preliminary injunction should be waived and that the parties would submit briefs in support of their positions. *Id.*

On January 14, 1981 Secretary Block filed his original answer. (J.A. 3, R. 25). Thereafter, on February 9, Secretary Block filed his cross motion for summary judgment unsupported by affidavits. (J.A. 3, R. 29).

On April 23, 1985, the district court granted Summary Judgment supported by uncontroverted affidavits of Appellees that they maintained separate households and that the income of their host family was not available to them. The district court found that the challenged amendments violated the Appellees' Fifth Amendment rights and enjoined its enforcement against them. (J.A. 8, R. 72). On May 17, 1985, Secretary Block filed his notice of appeal. (J.A. 8, R. 79). Neither defendant Marlin Johnston, Director of the Texas Department of Human Resources, nor the other defendant state officials who administer the Food Stamp Program have appealed the judgment of the district court. The district court never acted upon the motion of *Castillo, et al.,* to certify the plaintiff class.

This Court noted probable jurisdiction on November 18, 1985. (J.A. 56).

The Facts

The factual record before this Court consists of the pleadings of the parties and the affidavits of the nine (9) Appellees and their lawyer. (J.A. 26-42, 50-53). Although each of the fact situations are similar, they demonstrate the breadth of the problem.

a. *Natividad Castillo*

In October of 1981, Natividad Castillo and his wife Petra were responsible for eight (8) children. (J.A. 19, 26-28). Three (3) of these children were from their marriage and five (5) were from Petra's prior marriage. *Id.* The family had migrated from Texas to Michigan to work in seasonal farm labor. *Id.* Things did not go well that year. After paying for the trip north and the return to Texas, their only asset was a 1978 Dodge automobile. *Id.* With no jobs, no money and no where to go, the Castillos were forced to move in with Theresa Barrera, Petro's married daughter by a previous marriage whose family was already receiving food stamps. (J.A. 19, 26-28). The Castillos applied for food stamps in October of 1981 but their application was denied because the Castillos were not considered a separate household from Theresa Barrera's household. Because Theresa's household had already been certified for the month, the food stamp office would not increase the daughter's October food stamp allotment so that the Castillos could receive some food stamps in October. (J.A. 26-30). Without the district court's intervention, the Castillo family would have been without any food stamps in October and with a reduced food stamp allotment after October.

On October 7, 1981 Natividad Castillo and his family filed the first of four consolidated cases challenging the amendment to 7 U.S.C. 2012 that prevented him from showing separate household status from that of Theresa Barrera, his wife's daughter from a previous marriage.

b. *Blanca Martinez*

Blanca Martinez, who is the mother of a nine month old child, was forced to move back to live with her parents and their two children after separating from her husband in 1982. (J.A. 31-32). Mrs. Martinez received no support

from her husband and her only income was an $85.00 monthly AFDC check for her daughter. (J.A. 31). Her parents only income was a small monthly Social Security check. *Id.* At the time Blanca moved in with her parents, they were not receiving food stamps. (J.A. 31-32). Blanca immediately applied for food stamps but was denied because she lived at the same residence as her parents. *Id.* Her mother, Mrs. Santillano, then applied for food stamps and received an allotment of $60.00 per month for the six individuals based on Blanca's AFDC check and her parents' social security income. (J.A. 32). The Santillano's income was not available to Blanca Martinez (J.A. 31-32).

c. *Sara Cortez*

In April of 1982, Sara Cortez was an unemployed mother of two children, ages 2 and 3. (J.A. 33-34). She had been living away from her parents for four years when she was separated from her husband and forced to move back in with her parents and their remaining two children. *Id.* Her only income at that time was an AFDC check of $117.00 a month. *Id.* Her application for food stamps was denied because she lived with her parents. *Id.* Her mother, Maria Costales, then applied for and received the food stamp allotment of approximately 46¢ (cents) per meal per person based on the income of the Costales family and the AFDC payment made to Sara Cortez as caretaker for her children. (J.A. 34).

d. *Cecilia Villafranca*

Cecilia Villafranca, had two children by different fathers. (J.A. 50-51). She received $80.00 child support

for one child and a monthly AFDC payment of $85.00 for the other. (J.A. 50). When her husband, the father of one of the children, was sentenced to prison, she was forced to move in with her brother. *Id.* She and her family had been receiving food stamps through February, 1983. (J.A. at 51). In March, 1983, her application for food stamps was denied because she lived with her brother and could not be considered a separate household. As a member of her brother's household she would not be eligible for food stamps because his family's income was attributed to her and her children even though she had no access to this income. (J.S. App. 3a).

e. ***Elias Ruiz***

Elias Ruiz and his wife Belinda, the parents of two young children, were both working until Elias lost his job in the summer of 1983. (J.A. 35-36). Although Elias had lived separately from his mother for the six years since his marriage to Belinda, they were forced to move in with his mother and her child. *Id.* Elias' mother had only limited resources which were necessary to support herself and her child. (J.A. 35). She was therefore unable to help out other than temporarily sharing her living space with her adult son, his wife and their two children. The two families purchased and prepared their food separately and as long as Belinda was able to work, they needed no outside assistance. (J.A. 36). However, when Belinda was hospitalized due to an injury and no longer able to work, Elias was forced to apply for food stamps. (J.A. 35-36). His food stamp application was denied because his household was not considered separate from that of his mother. (J.A. 35).

f. *Robert Cody*

In late December of 1981, migrant farm workers Robert Cody and his wife, Jerry Cody, were the parents of two small children. (J.A. 39, 41). They had been in Michigan working in the fields. *Id.* When they returned to Texas they were unable to secure further employment and were forced to move in with Robert Cody's mother, Erma Lee Cody, and her other five children. (J.A. 39-41). The mother was an unemployed recipient of food stamps whose only income was a small monthly benefit from the Veterans' Administration. *Id.* Jerry Cody applied for food stamps on Janaury 4, 1982 but her application was denied because her household was not considered separate from that of her mother-in-law. (J.A. 42). Because the food stamps for the month had already been distributed to the mother, the food stamp office refused to increase her food stamp allotment so that Jerry Cody and her family could receive some food stamp benefits in January. (J.A. 40, 42).

g. *Sylvia Nieto*

Sylvia Nieto is the mother of one child. (J.A. 37-38). Her only income at the time that this case was filed was a monthly supplemental security income check in the amount of $176.47 as a result of physical disability. (J.A. 37). She and her son had been receiving food stamp benefits as a household separate from her parents for approximately eight months. *Id.* On December 8, 1981, her application for food stamps was denied because she and her son were no longer considered a separate household from her parents. *Id.*

h. *Gregorio Alvarado*

After Gregorio Alvarado lost his job and his wife became too ill to work, they and their three young children were forced to move in with Mr. Alvarado's sister, Magdalena Tovar, and her family. (J.A. 52). Up until that point, Mr. Alvarado and his family had been receiving food stamps as a separate household. (J.A. 52). Mr. Alvarado was denied food stamps for May, 1983 because his household was not considered separate from that of his sister. (J.A. 52). Mr. Alvarado's brother-in-law's income was not available to Mr. Alvarado and his family. (J.A. 53).

The record is undisputed that all of the Appellees had to move in with a close relative because they had no other place to go, that the income of the host family was unavailable for use by their family and that each of the families continued to maintain seperate households. (J.A. 26-27, 31-42, 50-53). Without the district court's intervention they would have either been completely deprived of food stamps or would have received reduced amounts of food stamps. (J.A. 26-30, 31-42, 50-53). The Castillo and Cody families would not have had any food stamps for the month after they first moved in with their relatives. (J.A. 27, 29-30, 39-42).

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SUMMARY OF ARGUMENT

At the heart of the matter before this Court is the question whether the government can adopt an irrebutable presumption which affects choices concerning family living relationships. The Appellees do not dispute the right of the government to adopt broadly based classifications. These are the sorts of rational distinctions upon which government must operate. However, when such broadly based rules are keyed to the type of irrebutable presumption which is found in this case, the bounds of Constitutionality are strained. This is particularly true where, as here, the ultimate effect is upon family living choices.

The right of family members to live together without interference from the government has long been recognized by this Court. The district court found that the food stamp "family rule," at question here, placed a burden on the rights of the Appellees to live together. The family members who are affected by this rule are people with no where else to turn. They present themselves at the doors of their siblings or parents. The relatives, usually with families of their own, are put to a difficult choice. If they take the relative's family in, then the assets of both will be aggregated to determine elgibility for food stamps. This is true whether the resources of the host family are in fact available to the relative. If the host family is already receiving food stamps, this will almost always result in a significant reduction. If the income of the host family is slightly over the level at which food stamps are awarded, there will likely be no assistance. If the host allows the relative to move in but refuses to cooperate in the application for food stamps, then

the guest family will have no assistance. If the host family applies for the food stamps but refuses to share them with the guest family, they will have no assistance. Of course, the primary effect is on the guest family which has no where else to turn. It is no choice to move out. But the ultimate effect is on the children who are neither responsible for their parents nor able to fend for themselves.

The adult Appellees are persons of low income who have established and maintained independent families. Each of these families was qualified for and received food stamp benefits. With only one exception, an unmarried single parent who has always lived with her parents, all have maintained entirely separate households and lived under separate roofs for extended periods of time. Because of further and continuing economic and personal tragedy, these families opted to deal with their situations by creating temporary and non-traditional arrangements involving two or more family groups living under the same roof.

The ultimate justification for the "family rule" is an attempt to avoid fraud. While this is an important governmental objective, there is no explanation of why family members are more likely to commit fraud than are non-family members. Nor is the government able to explain why it was necessary to adopt such a broadly based exclusion. The "family rule" presumes that adult siblings and parents will always be able to share all of their resources and will in fact share those resources. This is far from common experience.

The statute in question distinguishes between these multi-family non-traditional living arrangements based

upon whether the families are related. That is, if two or more non-related families move in to live together, they are permitted to demonstrate that they maintain separate households. There would be no reduction or elimination of benefits. If, however, two or more related families begin a similar relationship, the income of both families is aggregated for the purpose of determining the amount of food stamps to which the household is entitled. There is an irrebutable presumption that all of the income of the host family is available to the members of the guest family or families. This is true whether or not the income of the host family is in fact available for use by the guest family. In some situations, the families will refuse to share. The host may not have enough to take care of his or her family. In other situations, the families may not be able to share all resources and prepare their meals together. Disease, differing work shifts, the lack of adequate facilities and a myriad of other common occurrences will prevent it.

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ARGUMENT

At the basis of this suit is the question of whether the government can enforce a law which arbitrarily creates an irrebutable presumption that under all circumstances related individuals who are forced to move in with one another will always be able to share their resources as well as prepare food and eat together. The government has misunderstood the issue. The Appellees here do not seek "the right to dine separately." (J.A. 28). Whatever the surface logic of the statute or the government's

brief, it ignores reality. Conditions beyond the control of many poor people such as health problems, the facilities in a poverty-level kitchen and differing work schedules of families make it impossible to always share all resources. In addition, the host family may decide not to share their other resources or refuse to cooperate in an application for food stamps.

THE "FAMILY RULE" UNCONSTITUTIONALLY INTERFERES WITH APPELLEES' PRIVACY RIGHT TO CHOOSE FAMILY LIVING ARRANGEMENTS

The district court found that the the "family rule" puts family members at a special and very particular disadvantage merely because they reside in the same building as their relatives. (J.S. App. 2a-3a). Unrelated individuals living together who are in all other respects a single economic unit may have their food stamp eligibility separately determined merely by the act of purchasing and preparing food separately. 7 U.S.C. 2012 (i); 7 C.F.R. 273.1 (a)(iii). They do not have to explain why they do so or demonstrate that they are compelled to do so. Family members, however, may in no event be granted separate household status, regardless of whether they do or are even able to share food or other household expenses. 7 U.S.C. 2012 (i). The only exception is provided for elderly (60 years of age or older) or disabled family members. 7 U.S.C. 2012 (i).

As the district court found, the appellees "will either lose their benefits entirely or have their benefits decreased as a result of these amendments." (J.S. App. 3a). There is clearly a severe burden on poverty level family members who reside with each other.

Natividad Castillo and the other Appellees are poor adults with children of their own. Before the personal and financial crisis which brought them to the situations where they had to abandon their independent homes, they lived on their own. Now they have been forced to move in with their close relatives. The record in this case indicates that this decision was because they had no alternative. This Court has consistently recognized that freedom of personal choice in matters of marriage and family life is given special Constitutional protection. *Moore v. City of East Cleveland*, 431 U.S. 494 (1977).

When governmental action impinges upon choices involving family life, it must face special scrutiny under which "the usual judicial deference to the legislature is inappropriate." *Moore v. City of East Cleveland, supra* 431 U.S. at 499. See also *Zablocki v. Redhail*, 434 U.S. 374 (1978); *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639-640 (1974); *Meyer v. Nebraska*, 262 U.S. 390, 399-401 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *Roe v. Wade*, 410 U.S. 113, 152-153 (1973); *Wisconsin v. Yoder*, 406 U.S. 205, 231-33 (1972); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Ginsberg v. New York*, 390 U.S. 629, 639 (1968); *Griswold v. Connecticut*, 381 U.S. 479 (1965); *id.*, at 495-496 (Goldberg, J., concurring); *Id.*, at 502-503, 85 (White, J., concurring); cf. *Loving v. Virginia*, 388 U.S. 1, 12 (1967); *May v. Anderson*, 345 U.S. 528, 533 (1953); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942).

This Court has stricken regulations that restricted free choice of family living arrangements while it has upheld virtually identical restrictions that had no impact on

families. Compare *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974) with *Moore v. City of East Cleveland*, 431 U.S. 494 (1977). In *Belle Terre*, a suburban housing ordinance designed to prevent groups of unrelated persons, apparently "hippie communes," from living together in a single dwelling was upheld. However, in *Moore* a virtually identical ordinance that prevented a grandmother from living with her two grandsons was stricken down. In doing so the Court distinguished the two cases on the grounds that in *Belle Terre* related persons were exempted from the impact of the ordinance. *Id.* at 498.

The year before the Court decided *Belle Terre*, it considered almost the identical question in *United States Department of Agriculture v. Moreno*, 413 U.S. 528 (1973). A provision in the Food Stamp Act denying benefits to households containing multiple unrelated persons was at issue. After observing that the "food stamp program was established . . . in an effort to alleviate hunger and malnutrition among the more needy elements of our society," *Id.*, at 529, the Court found that the denial of the stamps to such household was insufficiently justified by any governmental purpose and "wholly without any rational basis." *Id.*, at 538.

What the government is attempting to justify here is a burden on family living arrangements that could not even be sustained where it fell on unrelated individuals in *Moreno*. In both situations the only real justification for the restriction is as a vehicle for the prevention of fraud and perhaps as a way to simplify the administration of the program. (Br. for Appellant at 18-20). Nothing in the government's brief or the record in this case explains

why the restriction which could not pass muster in *Moreno* where no familial interests were involved can now be justified here.

It strains the imagination to believe that a person would actually endure all the problems involved with sharing his home with a relative and the relatives' family to earn a maximum of 88¢ (cents) per meal per person. In this regard, there has been no attempt to explain why it is more likely that related individuals would commit this sort of fraud than unrelated individuals. The government could easily have dealt with this alleged fraud by allowing the food stamp recipients to come in and show the reasons that separate households are necessary. In fact, in most instances this information would be readily available at the time the initial request for stamps is made.

What is before the Court is a situation where people have come to the end of their rope. Almost by definition, they are absolutely unable to maintain separate living quarters. They have frequently been evicted and have absolutely no where to go. They present themselves at the door of their relatives who usually are in little better financial shape than they are. The relative is put to a very hard choice as a result of this statute. The strain placed on families increases to levels which become highly destructive. Do they take their family member in and deprive their own spouse and children? What happens after the guest family is taken in and the host family feels the unexpected financial pinch? These sorts of pressures have monumental effects even on families with incomes far in excess of the ones who need food stamps.

In the final analysis, in almost every situation, the ultimate effect will be on the children. Adults can get by.

The "family rule" unquestionably and unreasonably burdens the family relationships of the poorest of the poor.

THE "FAMILY RULE" NOT ONLY INTERFERES WITH APPELLEES' RIGHT TO LIVE TOGETHER BUT THE HARM DONE TO THE APPELLEES ALSO OUTWEIGHS THE INTEREST OF THE GOVERNMENT

Even if the "family rule" did not have a direct impact on choices concerning family living arrangements, it should nevertheless be stricken. The traditional equal protection analysis requires that a classification be rationally related to the governmental interest at question. *Plyler v. Doe,* 457 U.S. 202 (1982); see also *United States Department of Agriculture v. Moreno,* 413 U.S. 530 (1973). The food stamp statute was designed "to raise levels of nutrition among low-income households [and] . . . to alleviate hunger and malnutrition." 7 U.S.C. Sec. 2011. The "family rule" does nothing to advance the nutritional or hunger goals. Indeed, as demonstrated earlier, it usually will make the problems more acute.

Since the "family rule" does nothing to advance the statute's policy, the government must look elsewhere to find the interest it seeks to advance. In a word, the justification here boils down to the argument that the "family rule" is necessary to eliminate fraud and abuse in the food stamp program. There is only suspicion that individuals such as the Appellees are more likely to commit fraud then would unrelated individuals in the same circumstances. Indeed, up until now, the argument made by the government to the courts in these sorts of cases was that the fraud is more likely to be found in the non-fam-

ily situation. See e.g. *United States Department of Agriculture v. Moreno, supra,* 413 U.S. 528; *Hurley v. Van Lare,* 380 F. Supp. 167 (S. and E.D. N.Y. 1974); and *McLaughlin v. Wohlegmuth,* 398 F. Supp. 269 (E.D. Penn. 1975).

In the matter before the Court, none of the Appellees have been accused of fraud. Nor did the government controvert the affidavits which establish that all of the Appellees maintain bona fide separate households. It is difficult to see how a family relationship makes a person more likely to lie to obtain separate household status for food stamps as the government contends. (Br. for Appellant 20). Poverty level or not, few adult siblings would be willing, let alone able, to share all of their resources to the detriment of their own families. The same is true of parents, particularly where they have numerous young children still at home. In this regard, many poverty level persons in the Southwest, as well as in other parts of the country, have religious beliefs and cultural feelings which prohibit effective birth control. As a result, many women will bear children during the entire time of fertility—the teens through mid-forties. Thus, when the adult child is forced to move back in with his or her parents, it will frequently be to a family with young children much like the family of a sibling.

This Court has recognized that "the [marriage] event not only creates a new family with attendant new responsibilities, but also modifies the pre-existing relationships between the bride and groom and their respective families." *Califano v. Jobst,* 434 U.S. 47, 53 (1977). In fact, the reasoning in *Jobst* demonstrates the point here. In that situation, Congress determined that social security

disability benefits should be cut off when a beneficiary marries because of the creation of the whole new family.

> Both tradition and common experience support the conclusion that marriage is an event which normally marks an important change in economic status. Traditionally, the event not only creates a new family with attendant new responsibilities, but also modifies the pre-existing relationships between the bride and the groom and their respective families.

Id.

What the "family rule" does here is to recreate the former familial relationship with all of its responsibilities. If, for example, the plaintiff in *Jobst* and his wife moved back to live with his parents, would he be entitled to a resumption of his social security benefits? Would this be true even though he and his wife maintained separate households? In this regard, it is significant that in Texas law as in virtually all other states support is required only between spouses and from parents to their minor children. Tex. Family Code Ann. Section 4.02 (Vernon Supp. 1986).

After having lived separately and having taken care of their families, the adult Appellees and their children have lost food stamps because they now live with relatives. In the best of all possible situations under the "family rule," this will be just a reduction in the amount of stamps available. However, in many, if not most circumstances, the guest family may not get any stamps at all. This happens where the income of the host family is a few dollars over the upper limit of food stamp eligibility. This happens when the stamps are issued to the host family[4] and there is no sharing of the stamps. This hap-

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4. 7 C.F.R. 273.1(d). The state agency may designate head of household or permit the household to do so.

pens when the host family refuses to cooperate in the application for food stamps. This is not an uncommon occurrence because the process of application not only requires a detailed disclosure of income and resources but also frequently involves contact with the applicant's employer. 7 C.F.R. 273.2(f)(4). The ultimate point here is that the guest family has no effective way of insuring the availability of stamps. Their only choice is to move out which for people in their situation is no choice at all. In "practical operation" the "family rule" "excludes from participation in the food stamp program, *not* those persons who are 'likely to abuse the program,' but, rather, *only* those persons who are so desperately in need that they cannot even afford to alter their living arrangements so as to retain their eligibility." *United States Department of Agriculture v. Moreno,* 413 U.S. 528, 538 (1973) citing *Dandridge v. Williams,* 397 U.S. 471, 485 (1970). The "family rule" before this Court is not only as "imprecise" but also as lacking in "rational basis" as the "unrelated person" rule in *Moreno,* 413 U.S. at 538.

Once again it is important to stress that it may be absolutely impossible for multiple families to purchase, prepare and eat food together. The link between poverty and illness is well established.[5] Malnutrition and ill health are

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5. Reutilinger, S., and Selowsky, M., *Malnutrition and Poverty,* at 1 (1976); Caliendo, M., *Nutrition and Preventive Health Care,* at 148, 156, 176, 177, 345 (1981); Wynick, M., *Nutrition in Health and Disease,* at 4, 21 (1985); Puri, S., and Chandra, R., *Nutritional Regulation of Host Resistence and Predictive Value of Immunologic Tests in Assessment of Outcome,* The Pediatric Clinics of North America, Vol. 32, No. 2 at 501 (April 1985); Mundinger, M., The New England Journal of Medicine, Vol. 313, No. 1 at 45, 46 (July 4, 1985); and Flores, J., *Mexican American Health Professions Policy Study,* at 104, 105, 106 (1984). See also *Hunger in America,* cited supra at footnote 1.

associated with hunger and poverty. The poor are much more likely to have such problems as tuberculosis and hepatitis, which would necessarily require separate preparation of food. An individual with a highly contagious disease such as tuberculosis or hepatitis would infect the rest of the individuals living in the house if his or her food and cooking utensils were used by the rest of the family.[6] The poor suffer from disease more than any other segment of the population.

Even if one were to concede that there is a problem with family fraud, then it could easily be dealt with by resorting to a far less intrusive and disastrous means than the irrebutable presumption of the "family rule." The same procedure could be used to test situations where non-family members live together under the same roof.[7] Making such individualized determinations may not completely serve the cause of "administrative efficiency" but as this Court noted in considering a similar argument "[T]he Constitution recognizes higher values than speed and efficiency." *Stanley v. Illinois,* 405 U.S. 645, 656

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6. In most instances, diseases such as diabetes, gall bladder problems, sickle-cell anemia, liver disease, heart problems, diarrhea, chronic inflamatory bowel disease, and hypertension require special diets. If all food is prepared in common, the diet of everyone living in the house is determined by the requirements of the disease. If anything, this would appear to increase the cost of the diet.

7. The Senate Committee on Agriculture, Nutrition, and Forestry recognized situations "in which people living together are properly treated as separate households for food stamp purposes." S. Rep. 97-504, 97th Cong. 2d Sess. 25 (1982). These situations such as different work shifts, separate cooking facilities, or a live in medical attendant, would require the separate purchase and preparation of food. *Id.*

(1972). In this regard, rather than an irrebutable presumption, a rebutable presumption would allow the family members to come in and demonstrate why they were unable to function as a unit.

As a result, this case is not like *Weinberger v. Salfi*, 422 U.S. 749 (1975), where the Court found that it was virtually impossible to detect sham marriages. There were severe problems in isolating such factors as intent, life expectancy, and whether there was any knowledge of terminal illness. *Id.* at 782. Those problems do not exist here. Substantive factors can be isolated to determine if separate households are in fact being maintained or for one reason or another have to be maintained. In addition, the presumption in *Salfi* was a duration of relationship test in which a surviving widow or step child could not receive Social Security benefits if she had been married to the wage earner for less than nine months. Indeed, the rule considered in *Salfi* was not even irrebutable. Exceptions to this nine month rule such as the birth of children or joint adoption were provided for which would establish the existence of a real marriage. *Id.* at 780. In the present case the presumption against the Appellees under the "family rule" is irrebutable and continues as long as they live with a relative and no exceptions are provided.

In *Plyler v. Doe*, 457 U.S. 202 (1982), this Court considered a Texas statute which denied undocumented alien children a public education. Reiterating that education is not a fundamental right and that the status of being undocumented is not a suspect classification, this Court found that the denial of an education to these children

did not further a substantial goal of the State. *Id.* In particular, the Court also said that education was not merely some form of governmental "benefit" indistinguishable from other forms of welfare benefits. *Id.*

Admittedly, food stamps are a benefit derived from social welfare legislation, but food stamps are of utmost importance to the recipients because food is basic to life itself. Seventy-five to eighty percent of food stamp expenditures go to families with children.[8] Children are major recipients of food stamps. They "now comprise 26.8% of the United States population, but 39.2% of all poor people."[9] Government spending on children and families, especially those with low-incomes, has recently declined and under current policies will continue to fall.[10]

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8. *Children, Youth, and Families:* Beginning the Assessment. Hearing Before The Select Committee On Children, Youth, And Families, House of Representatives, 98th Cong. First Sess., Hearing Held In Washington, D.C. on April 28, 1983, at 16. Printed for the use of the Select Committee on Children, Youth, and Families.

9. Henry, M., *Youth Law News*, Journal of the National Center for Youth Law, Vol. VI No. 4 at 12, July-August 1985.

10. *Children, Youth, and Families:* Beginning the Assessment. Hearing Before The Select Committee On Children, Youth, And Families House of Representatives, 98th Cong. First Sess., Hearing Held In Washington, D.C. on April 28, 1983, at 56. Printed for the use of the Select Committee on Children, Youth, and Families. Statement of Harold Richman and Hermon Dunlop. See also *Hunger in America*, generally Chapt. 6 at 101 ff. cited supra in footnote 1. The Department of Agriculture penalizes states for helping the poor. It imposes "sanctions only for errors in favor" of the food stamp recipient. " 'When in doubt deny' stated one administrator, 'That's what the government is making us do. Do we hurt a lot of people this way? You bet! Do we mean to? No. But the federal government wants to create an anti-recipient system and they have it.' "

Any individual deprived of food will be hurt by hunger and malnutrition.[11]

The children who are hurt by this hunger and malnutrition are in the same situation as the children in *Plyler,* for they "can affect neither their parents' conduct nor their own status". *Id.* at 220. Denying these children an adequate diet will reduce the government's cost of the food stamp program but surely the government's interest in cutting costs does not outweigh the importance of the Appellees' interest in food. In that regard, the children here are subject to an even more serious disability than those in *Plyler.* Even if a child misses out on education, at least there is hope that future specialized job training programs or adult education in the form of a GED equivalence high school degree may be available. If children miss out on the required food during the development of their minds and bodies, the country runs the major risk of them becoming educationally disabled and economically dependent for life.

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11. *Hunger in America,* at 72, 73 cited supra in footnote 1. Hunger and malnutrition lead to wasting and stunting of growth. *Id.* Nutrition also has a decided effect on the functional performance of children. *Id.* at 77. "Throughout the country, the Physicians Task Force heard poor people, especially parents, describe intense feelings of depression, failure and despair [related to their frustrated attempt to acquire food for their families]." *Id.* at 84.

THE "FAMILY RULE" CREATES AN IRREBUTABLE PRESUMPTION THAT FAMILY MEMBERS WHO RESIDE IN THE SAME BUILDING ARE ALWAYS ABLE TO AND IN FACT ALWAYS DO SHARE RESOURCES

As previously noted, the effect of the "family rule" is to irrebutably presume that family members who reside in the same building always comprise a single household which always is able to and in fact always do share income and other resources. "Permanent irrebutable presumptions have long been disfavored under the Due Process clauses of the Fifth and Fourteenth Amendments." *Vlandis v. Kline,* 412 U.S. 441, 446 (1973); *Cleveland Board of Education v. LaFleur,* 414 U.S. 632 (1974); *United States Department of Agriculture v. Murry,* 413 U.S. 508 (1973); *Stanley v. Illinois,* 405 U.S. 645 (1972); *Bell v. Burson,* 402 U.S. 535 (1973). As this Court noted in *LaFleur,* there is no warrant for the automatic denial of a right on the basis of an irrebutable presumption "when that presumption is not necessarily or universally true in fact and . . . there is a reasonable alternative means of making the crucial determination." *Id.* 414 U.S. at 644 citing *Vlandis v. Kline,* supra, 412 U.S. at 452.

The "family rule" before the Court is very similar to the questions involved in *Murry* and *LaFleur.* In *Murry,* the Court invalidated a regulation that denied food stamps to any household which included one or more persons over the age of eighteen who had been claimed as a dependent on a federal income tax return by a taxpayer who was himself or herself ineligible to receive food stamps. *Murry* involved the same legislative history under consideration here. There was the same Congressional con-

cern that non-needy households were participating in the food stamp program. 412 U.S. at 512. The presumption was invalidated because this Court determined that it had no relation to the actual need of the persons affected and concluded that "the deduction taken for the benefit of the parent in the prior years is not a rational measure of a need of a different household with which the child of the tax deducting parent lives . . . " *Id.* at 514.

In *Murry* what this Court did was strike a short cut by which individuals were determined to be ineligible for food stamp benefits. As here, there was no question about ultimate criteria for eligibility. Rather, what was attacked was the use of a proxy concept, in the form of an irrebutable presumption, to prove eligibility for the ultimate benefits.

In *Cleveland Board of Education v. LaFleur, supra,* the Court considered the effect of a regulation requiring mandatory maternity leave for school teachers. The policy was keyed to an irrebutable presumption concerning pregnancy and the ability to perform a job. It was stricken because of its effect on the "freedom of personal choice in matters of marriage and family life. . . ." 414 U.S. at 639-40.

At the basis of the government's justification for the "family rule" is the concept of "economies of scale" overlayed upon a presumption that if family members live under the same roof there will be an automatic sharing of all resources. While such a position is appealing, it is not the real world. It may be correct that there is appropriate presumption that the income of one spouse is available to the other and that the income of the parent is available

to an unemancipated child. Virtually every state has laws which allow the enforcement of those sorts of relationships. However, the "family rule" at question here does not limit itself to such spousal or parent child relationships.[12]

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CONCLUSION

For the reasons stated above the decision of the District Court should be affirmed.

Respectfully submitted,

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12. It is true at the outset that the district court made a finding in passing that the distinction in question appeared to meet the test set down by the Court in *Salfi.* (Juris St. 6a). However that dicta must be carefully considered in light of the fact that the district judge had already determined that the "family rule" had an impermissible effect on families as well as against the meager factual record in this case. For example, there never was a formal hearing other than on the initial motions for a temporary restraining order and as the Court can see, the record consists of only ten (10) short affidavits. Indeed, if one were to remove the style and the formal language from each of the affidavits the real factual record is actually composed of only a few hundred words.

AMICUS CURIAE

BRIEF

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Secretary of Agriculture

Appellant,

v.

NATIVIDAD CASTILLO, *ET AL.*

Appellees.

On Appeal from the United States District Court
for the Southern District of Texas

BRIEF AMICUS CURIAE OF FOOD RESEARCH AND ACTION CENTER; THE HONORABLE MICKEY LELAND, MEMBER OF CONGRESS; AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES; AMERICAN PUBLIC HEALTH ASSOCIATION; BREAD FOR THE WORLD; CENTER FOR LAW AND SOCIAL POLICY; COMMUNITY LIFE SERVICES, INC.; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA — UAW; NATIONAL LEGAL AID AND DEFENDER ASSOCIATION; PUBLIC VOICE FOR FOOD AND HEALTH POLICY; UNITED FOOD AND COMMERICAL WORKERS; AND TOMASA MONTANEZ, URGING AFFIRMANCE

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INTRODUCTION

1986 is a year of hunger. Although measured civilian unemployment is at its lowest point in the past five years, more than eight million members of the workforce remain out of work, and many more individuals are no longer counted because they are no longer eligible for unemployment benefits. Hundreds of thousands, perhaps millions, of Americans are homeless, wandering the streets in search of temporary heat, shelter, and food. Thousands more have recently lost their homes and belongings through floods. For all these adults and for all their children, hunger and malnutrition are a very real fact of life.

The major response of the

United States government to such hunger and malnutrition is the Food Stamp Program, which presently assists over 20 million Americans to receive a minimally adequate diet every month.

The maximum amount of benefits that an eligible household is entitled to receive under the Food Stamp Program is an allotment equal to the cost of the "Thrifty Food Plan," 7 U.S.C. Section 2012(o), reduced by assumed economies of scale according to household size. The maximum allotment as of October 1985 for a household of four is 74 cents per person per meal. For households that have some income, the maximum Food Stamp allotment is reduced by 30 percent of household income, plus additional statutory deductions. 50

Fed. Reg. 36641, 36642 (Sept. 9, 1985).

The Thrifty Food Plan is the least costly of four food plans developed by the United States Department of Agriculture. The budget constraints of the Thrifty Food Plan are those determined by the Department of Agriculture in its Economy Food Plan, which was defined by the Department of Agriculture as a "nutritionally adequate diet for use when the cost of food must be lower than the average food expenditure of low-income families. It is essentially for emergency use." The Federal Agricultural Research Service of the Department of Agriculture has acknowledged that Food Stamp allotments are inadequate to ensure

nutritional adequacy among recipients. 45 Fed. Reg. 21998, 22000 (Apr. 2, 1981). The instant case concerns this "essentially for emergency use" program which supports 20 million Americans and specifically concerns the ability of families to receive Food Stamps when related adults and their families are thrown together by economic necessity or natural disaster.

Food Stamp allotments are determined on the basis of a "household," meaning an individual or group of individuals living together who customarily purchase food and prepare meals together for home consumption. Because a group of individuals will receive more Food Stamps as several households rather

than one household, Congress has taken steps to prevent groups of individuals from arbitrarily defining themselves as several households when in fact only one household exists. Among these steps is 7 U.S.C. Section 2012(i), which provides "that parents and children, or siblings, who live together shall be treated as a group of individuals who customarily purchase and prepare meals together for home consumption even if they do not do so." There is no exception to this statute for family members, although the statute allows other unrelated groups to obtain separate household status while living together and obtain greater benefits. 7 U.S.C. Section 2012(i); 7 C.F.R. Section 273.1(a)(1).

In practice, this statute can produce harsh and unfair results. In a Florida case,[1] an adult couple and their young children had been receiving Food Stamps while renting a mobile home as their residence; when the home was condemned, they were forced to move into the wife's parents' house. Although the two families were not sharing food or cooking facilities, the young family lost all of its Food Stamps when the wife's stepfather refused to provide verification of his income to Florida Food Stamp administrators. In another case in Texas, several families lost their Food Stamps or saw them reduced when adult children or siblings were

[1] Tripp v. Block, No. 85-1203-Civ.-T-17 (M.D. Fla. 1985).

forced to reside together. In the Texas case, Castillo v. Block, a United States District Judge agreed with the plaintiffs, ruled that the statute unjustifiably discriminated against families, and enjoined the United States Department of Agriculture from enforcing the statute against the plaintiffs. It is the Texas case that is presently before the Court, and the above-named amici urge the Court to affirm the lower court's opinion.

INTEREST OF AMICI CURIAE

The amici curiae have a vital interest in the outcome of this case because they are individuals or organizations who themselves or whose members, constituents, clients, or patients have been dramatically

affected by the federal statute that Appellees have challenged in this litigation. The amici come from many different states, counties, and cities, whose Food Stamp Programs must all comply with the federal statutory definition of "household," the validity of which is the subject matter of this case.

The amici represent not just governmental bodies or associations with a particular viewpoint. They represent individuals who are on the verge of homelessness, suffer serious health problems, and are destitute, whose lives have been hurt by the government's implementation of the challenged federal statute.

Amicus Food Research and Action Center engages in litigation, policy

analysis, public education, and research on nutrition and food issues affecting low-income persons. Congressman Mickey Leland, Representative of the 18th District of Texas and Chairman of the United States House of Representatives Select Committee on Hunger, is concerned that existing Food Stamp policy arbitrarily obstructs for many individuals the basic right to a decent diet. Amicus American Public Health Association (APHA), founded in 1872, is the oldest and largest public health society in the world, with a membership of over 50,000 health professionals. A key way that APHA strives to promote the health of the American people is by encouraging adequate nutrition through governmental action and public

education: APHA has recognized that adequate nutrition is essential to the public health and that without continuing federal support, it will be difficult to ensure that a national policy for meeting the nutritional needs of the poor will be maintained.

Amici American Federation of State, County and Municipal Employees, UAW, and United Food and Commercial Workers together represent more than 3.7 million American workers and their families; at any time, any of these workers could lose their employment and be in need of Food Stamps due to trade deficits, a surge in inflation, recession, or a host of other factors beyond their control.

Amicus Bread for the World consists of 40,000 religiously

affiliated volunteers across the country who work to increase the amount of food available to the poor and the homeless. Amicus Community Life Services, Inc., an agency of the Lutheran Church, represents the 8,000 poor and homeless in the District of Columbia by assisting them to gain access to federal entitlement programs among which the Food Stamp Program is of critical importance.

Amicus Center for Law and Social Policy has traditionally represented poor people on Food Stamp issues around the country. Amicus National Legal Aid and Defender Association is a private, non-profit membership organization that represents over 2,300 civil legal aid and public defenders' offices

nationwide. Those civil programs in 1985 represented 1.5 million clients, many of whom would be affected by the outcome of this case. Amicus Public Voice for Food and Health Policy is a non-profit consumer, research, education, and advocacy organization which seeks to ensure that all Americans have access to nutritious and affordable food. Amicus Tomasa Montanez is a Food Stamp recipient whose benefits for herself and two minor daughters were reduced because her disabled adult son's Supplemental Security Income benefits were counted in calculating their Food Stamp benefits.

These persons have a very personal stake in the outcome of this case because it will significantly

affect their ability to meet the most basic need of human subsistence - without which nothing else has any value - and affect fundamental family relationships and family integrity.

They therefore join Appellees in urging this Court to affirm the decision of the District Court. All parties have consented to the filing of this Brief, and the appropriate authorizations are also being filed with the Clerk of the Court.

FACTUAL BACKGROUND

The phenomenon which Appellees illustrate, that households move in with relatives to avoid homelessness, is pervasive. Public housing is not available. The situation in New York City is a compelling example.

The City of New York reported

that in fiscal 1985, it housed, referred, or encountered almost 100,000 persons in approximately 50,000 households. City of New York, Mayor's Management Report (Sept. 1985); C. Felstein & S. Koepper, Housing Need & Housing Production in New York 9 (Pratt Inst. 1985). Many uncounted others did not stay long enough to be recorded in official shelter and "welfare hotel" statistics or are in private shelters or on the streets. Thus, these officially reported statistics are all the more alarming. These numbers of homeless persons point up the critical shortage of affordable housing. In addition to the homeless families discussed above, all of whom may at some point try to

relieve their homelessness by doubling up with relatives, this shortage of housing has already caused an estimated 230,000 families in New York City to be doubled up, unable to secure their own accommodations. The New York Times, Jan. 12, 1986, Section 8, at 1.

The New York City Housing Authority, which for years firmly enforced regulations prohibiting doubling up, now concedes 35,000 households, 20% of households in public housing projects, are doubling up and takes no action against the greatly increasing incidence of such households. The lack of available housing, public or private, is all too clear, like the reality of 175,000 applicants on the Housing Authority

waiting lists. C. Felstein & S. Koepper, supra, at 9. Since Housing Authority tenancies are relatively highly prized, and tenants experience greater contact with on-site management than low income tenants in privately owned housing, public housing tenants are less likely to accommodate another household for fear (though perhaps no longer warranted) of endangering their own tenancies. Thus, low income households generally are taking in others who lack shelter in even greater proportion.

Flooding caused by record-heavy rains has caused similar housing shortages in West Virginia in the past six months. A study by the West Virginia Governor's Office reported

that the floods in West Virginia displaced 6,258 persons. Governor's Summary of Flood Disaster by Residences, County and Community, Office of Emergency Services (Nov. 17, 1985). According to the Governor's Office, most of these disaster victims were forced to take refuge with family members and friends. Under the statutory definition now being challenged, those families who were able to find shelter with other family members are foreclosed from obtaining Food Stamps on their own.

In this case, the Castillo family provides another example of a common type of doubling up in American families, that experienced by migrant farmworkers. The Castillos, consisting of mother, father, and

children, had spent the summer of 1984 picking crops in Michigan. When they returned to their native area of Brownsville, Texas, they were forced ~~to take~~ up residence with Mrs. Castillo's daughter, Petra Sosa, because the trip back to Texas had used up whatever savings they had left. Although the Castillo and Sosa families were separate economic and living units, the Castillos were denied the ability to receive Food Stamps by themselves because they resided with an adult child, Petra Sosa, who already received Food Stamps. The statute at issue here was the sole cause of the Castillo family's inability to receive Food Stamps. See Fourth Amended Complaint, Joint Appendix at 19-20, 26.

A case in Pennsylvania[2] illustrates another facet of the hardship caused by the statute at issue. A mother and son had been receiving Food Stamps until they were terminated because the mother could not obtain information about her resident sister's income and other circumstances. The mother tried as hard as she could to obtain the verification, but she had no control over her sister, who did not want to report her income or living arrangements to the County Assistance Office.

Amicus Tomasa Montanez illustrates yet another facet of the problem. In September 1983,

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[2] Robinson v. Block, No. 84-4229 (E.D. Pa. 1984).

Ms. Montanez's Food Stamps for herself and two minor daughters were drastically reduced because the local Food Stamp agency included her disabled adult son in her household. The Supplemental Security Income benefits that her son receives are intended by the Social Security Act for his exclusive use. At an administrative hearing, Ms. Montanez explained that as her son's representative payee she always used these benefits for his needs only. She testified that when she shops for food, she only uses her son's money for the food he chooses for himself. Her son eats separately and refuses to share his food with the rest of the family. Similarly, the food Ms. Montanez purchases for herself

and her two daughters is not shared with her son. Ms. Montanez is left with one of two choices: to use for her two daughters and herself money intended exclusively for her disabled son or to deny her two minor children and herself the minimum nutrition that the Food Stamp Program was intended to provide.

The Food Stamp Program, established pursuant to the Food Stamp Act of 1977, as amended, 7 U.S.C. Sections 2011-29, is designed to "permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation." 7 U.S.C. Section 2011. By establishing the Food Stamp

Program, Congress intended to alleviate the "hunger and malnutrition" that attends the "limited food purchasing power of low-income households." Id.

The Food Stamp Program is a cooperative state-federal program in which the federal government issues Food Stamps to states that choose to participate in the program. Each state, in turn, distributes Food Stamps to eligible households that apply for assistance. 7 U.S.C. Sections 2011-16. The federal government reimburses a participating state for at least 50 percent of the state's administrative costs and pays 100 percent of benefit costs. 7 U.S.C. Section 2025(a).

Participation in the Food Stamp

Program is "limited to those households whose income or other financial resources, held singly or in joint ownership, are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet." 7 U.S.C. Section 2014(a). The Food Stamp Act defines "household" in economic terms, as "an individual ... or group of individuals who live together and customarily purchase food and prepare meals together for home consumption." 7 U.S.C. Section 2012(i). All members of a household must apply for Food Stamps as a unit. All members of a household must verify the information needed for application purposes. In determining eligibility and benefit levels, the income and resources of

all household members are pooled. Food Stamp benefit levels are then calculated and issued to the household members as a unit. 7 U.S.C. Sections 2014, 2020(e)(2)-(11), (15), (16), (20); 7 C.F.R. Section 273.2.

Under the Food Stamp Act, individuals are free to choose their own living arrangements and to share food expenses and cooking with anyone they want. They may establish separate Food Stamp households from other residents of their home by buying and cooking food separately. 7 U.S.C. Section 2012(i); 7 C.F.R. Section 273.1(a)-(1). The Secretary's regulations establish a procedure by which individuals are to verify their household composition:

Household composition. State agencies shall verify factors affecting the composition of a household, if questionable. Individuals who wish to be a separate household from those with whom they reside shall be responsible for proving a claim that they are a separate household to the satisfaction of the State agency. Individuals described in Section 273.1(a)(1)(iv), who wish to be a separate household, shall also be responsible for obtaining the cooperation of the individuals with whom they reside in providing necessary income information to the State agency, and for providing (at State agency request) a physician's statement that they cannot purchase and prepare their own meals. 7 C.F.R. Section 273.2(f)(2)(i).

Nevertheless, the statute at issue conclusively presumes that siblings, even if adults with their own families, and parents and children, even if adults with their own families, who have the same residence are a household for Food Stamp purposes. This presumption holds even if the separate families do

not purchase and prepare food together and cannot, under law, intermingle income or claim an obligation of support. Unrelated families, by contrast, are not placed under this irrebuttable presumption.

In effect, the statutory presumption that siblings and parents and children comprise a Food Stamp household vests these relatives with veto power over the eligibility of their relatives for Food Stamp assistance. When even one brother, sister, child, or parent refuses to cooperate in the application process by failing to verify income and resources, all household members are foreclosed from participating in the Food Stamp Program. The statutory provision challenged here thus

inevitably forecloses affected household members from securing even the rudiments of an adequate diet.

Moreover, even if a brother, sister, parent, or child can secure the cooperation of his putative household members in verifying income, Appellant's policy is to pool income of all household members, even if the income of some relatives is legally inaccessible to the other relatives with whom they live.

The importance of the issues at stake here cannot be overemphasized. The denial of Food Stamps causes malnutrition, and malnutrition poses tremendous risks to infants, children, and adults and health costs to society, in both human and monetary terms.

The infant's health may be compromised by poor maternal nutrition, including such risks as prematurity and low birth-weight. The low birth-weight baby faces thirty times the normal likelihood of dying before the age of one. Low birth-weight accounts for more than half of infant deaths in the United States, and 75% of deaths to babies under a month. Low birth-weight is the eighth leading cause of death in the United States. Univ. of N. Carolina - Child Outcomes Project, Monitoring the Health of America's Children: Ten Key Indicators (Sept. 1984).

The child, deprived of adequate nutrition during the critical years of brain growth, is at risk of cognitive

and other developmental deficits. Stock, Smythe, Moody, & Bradshaw, "Psycho-Social Outcome and C.T. Findings After Gross Malnourishment During Infancy: A 20 Year Developmental Study," 24 Developmental Medicine and Child Neurology 419 (1982).

Other childhood risks from inadequate nutrition include delayed growth, or stunting, defined as height below the fifth percentile for a given sex and age, wasting, defined as weight below the fifth percentile for age or height, Univ. of N. Carolina - Child Outcomes Project, supra, and increased vulnerability to environmental toxins, including lead, which can affect the brain and compound the direct effects of malnutrition on intellectual development. Mahaffey &

Vanderveen, "Nutrient-Toxicant Interactions: Susceptible Populations," 29 Environmental Health Perspectives 81 (1979); Ziegler, "Absorption and Retention of Lead by Infants," 12 Pediatric Research 29 (1978). As at all ages, malnutrition in childhood can weaken resistance to infection. Poorly nourished youngsters are at risk of more frequent colds, ear infections and other infectious diseases. Chandra, "Interactions of Nutrition, Infection and Immune Response," 68 Acta Paediatrica Scandinavia 137 (1979). Thus the developmental hazards entailed in poor nutrition may be further compounded by absence from school and even curtailment of some childhood activities.

Loss of function also characterizes the affect of mild malnutrition on young and middle aged adults. Reduced productivity at work and impaired social function are both potential outcomes. And of course adults of all ages are vulnerable to infection and deficiency diseases associated with malnutrition. In old age, the risks of malnutrition are heightened once again. In this period the impact of food on health maintenance and disease prevention is particularly crucial. Physician Task Force on Hunger in America, Hunger in America: The Growing Epidemic 67 (Harv. Univ. School of Pub. Health 1985).

SUMMARY OF ARGUMENT

Amici challenge the constitutionality of a provision of the Food Stamp Act, 7 U.S.C. Section 2012(i)(2), which requires that brothers and sisters and parents and children who have the same residence, under all circumstances except where a parent or sibling is elderly or receiving certain disability benefits, be treated as a single household for purposes of receiving Food Stamps. Amici claim that this statute penalizes Food Stamp applicants and recipients based on family associations and violates both the equal protection and the due process guarantees of the Constitution. As a result of the statute Appellees, in spite of their great need, are

unable to receive Food Stamps for which they would be eligible if they did not reside with certain family members. The statute has the further effect of giving third parties veto power over Food Stamp eligibility by denying benefits to persons who cannot secure those third parties' cooperation in the verification process.

Amici do not dispute that Food Stamp allotments may be computed on the basis of the income and resources of all persons living together who have or can obtain access to each other's income and resources. Rather, amici contend that Appellant's computation of Food Stamp allotments on the basis of relatives' income and resources that a family cannot make

available to meet their food and other needs violates equal protection and due process. Amici urge further that Appellant's absolute denial of Food Stamps to the families of otherwise eligible persons residing with other relatives who refuse to cooperate in a Food Stamp application is violative of due process and an unconstitutional delegation of public power to a private party.

ARGUMENT

I. UNAVAILABLE INCOME AND RESOURCES

Appellant determines a family's eligibility and Food Stamp allotment based not only upon the family's income and resources, but also on the income and resources of: resident siblings, parents, and children; those relatives' resident siblings,

parents, and children; and any persons with whom they have chosen to purchase and prepare food. This is so even though the family applying for Food Stamps has no control over or access the income and resources of the siblings, parents, and children, let alone their households. This extended measurement of income and resources does not take place, however, when a family resides with persons who are not the family members' siblings, parents, or children.

As this Court stated in Moore v. City of East Cleveland, 431 U.S. 494, 499 (1977), "when the government intrudes on choices concerning family living arrangements, this court must carefully examine the importance of the government interests

advanced and the extent to which they are served by the challenged regulation." The statute at issue here has intruded on choices concerning family living arrangements by disqualifying the plaintiff families in Castillo and Tripp from Food Stamps, even though they were otherwise eligible to receive Food Stamps, solely because the families were forced by circumstances to live with other relatives. The District Court here found that such an impact discriminated against families in violation of the plaintiffs' rights to equal protection under the Fifth Amendment; amici urge the Court to affirm this conclusion.

II. PRESUMPTION BASED ON FAMILY ASSOCIATION AND NOT ON FACT

If persons reside with a brother, sister, parent, or adult child, Appellee does not allow them the freedom - that is allowed all other persons - to choose their own living arrangements or to share food expenses or cooking with whomever they want. 7 U.S.C. Section 2012(i)(2) mandates that such persons cannot be considered separate households, regardless of social and economic relationships regardless of dietary requirements, regardless of arrangements for the purchase and preparation of food, and regardless of ability to obtain cooperation from the relative in application, verification, or distribution of Food Stamp allotments. The only exception is for

a parent or sibling who is elderly or receiving certain disability benefits. 7 U.S.C. Section 2012(i)(2); 7 C.F.R. Section 273.1(a)(3).

Appellant's implementation of 7 U.S.C. Section 2012(i) by irrebuttably presuming that siblings, parents, and adult children having the same residence are "living together" for purposes of defining Food Stamp households deprives the words "living together" of any substantial meaning and misrepresents the situation of siblings, parents, and adult children living entirely separate lives, socially, economically, and on the basis of dietary requirements, in violation of Appellees' rights to due process and equal protection

under the Fifth Amendment to the United States Constitution.

The statute at issue lacks critical ingredients of procedural as well as substantive due process. By creating the irrebuttable presumption that all siblings and all parents and children who reside together customarily purchase and prepare meals together for home consumption, the statute denies Appellees the right to a hearing on this issue, even if they do not purchase and prepare their meals together. The provision rests on an irrebuttable presumption often contrary to fact, which seriously impacts the ability of persons genuinely in need to provide an adequate diet for their households.

III. PENALTIES BASED ON FAMILY ASSOCIATION

The statute at issue penalizes Food Stamp applicants and recipients based on family associations. Appellant denies individuals a meaningful opportunity to establish or verify their separate households solely on the basis of family status. Despite their great need, Appellees are unable to receive Food Stamps for which they would otherwise be eligible were they not residing with certain family members.

Appellant's implementation of 7 U.S.C. Section 2012(i) by requiring persons who reside with siblings, parents, or adult children to be treated as members of the same household as such relatives for purposes of receiving Food Stamps,

even when they purchase and prepare food separately, violates Appellees' rights to family association under the First Amendment and their rights to due process and equal protection under the Fifth Amendment to the United States Constitution.

IV. DELEGATION OF GOVERNMENT POWERS TO PRIVATE PARTIES

Because of Appellant's rigid policy of treating the families of all siblings and parents and adult children having the same residence as a single household, Appellant gives each of those individuals veto power over their relatives' eligibility for Food Stamps. When one sibling or a parent or adult child or a member of that individual's family fails to cooperate in an application, Appellant considers the whole "household" to

be failing to cooperate and denies Food Stamps not only to that individual's siblings, adult children, and parents, but to all of their families, who are willing to do everything in their power to comply with the program's requirements. 7 C.F.R. Section 273.2(d). Appellant's policy thus allows that private party to control the Food Stamp eligibility of the families of siblings, adult children, and parents.

Appellant's implementation of 7 U.S.C. Section 2012(i) by denying Food Stamps to the families of otherwise eligible persons residing with siblings, parents, or adult children who fail to cooperate in a Food Stamp application grants veto power over a family's Food Stamp application to a

sibling, parent, or adult child under no obligation to cooperate in the application. It thus delegates to a private party the governmental power to determine eligibility for Food Stamps, in violation of Appellees' rights under the due process clause of the Fifth Amendment to the United States Constitution; the separation of powers embodied in Articles I, II, and III of the United States Constitution; and the Food Stamp Act.

Nor does the due process clause warrant the administrative overreaching embodied in Appellant's implementation of 7 U.S.C. Section 2012(i), which creates not only a conclusive presumption of available income, but a conclusive presumption of ineligibility, when a relative

refuses to cooperate with the Food Stamp agency. It places an unconscionable burden on Food Stamp applicants who, without any fault of their own, are unable to prove their relatives' eligibility. Such a policy is so arbitrary and capricious as to violate due process.

Appellants and amici do not dispute that applicants for public assistance are obliged to furnish complete information regarding factors that affect eligibility - when the information is within the applicants' control. Applying these principles to a public assistance law that reduced the shelter allowance for a family receiving Aid to Families with Dependent Children due to non-eligible "lodgers" living in the household,

this Court in Van Lare v. Hurley, 421 U.S. 338, 347-48 (1975), invalidated such a law, stating:

> Another ... justification asserted is that the shelter allowance is reduced to prevent lodgers, who by definition are ineligible for welfare, from receiving welfare benefits. The regulations, however, do not prohibit lodgers from living in welfare homes. The lodger may stay on after the allowance is reduced, and the State takes no further action. The only victim of the state regulations is thus the needy child who suffers reduced benefits.

The analogy to this case is striking. Here, the presumption that relatives who refuse to cooperate with the applicant or the agency are able to provide for the applicant's food needs is justified by Appellee as encouraging relatives to fulfill financial obligations that are enforceable neither by the government nor by the applicant. The needy

applicant, who either has already relied on relatives to provide shelter or has already extended shelter to relatives, is again the victim.

Further, the courts have abolished policies that deny public assistance to children as a result of relatives' refusals to disclose their income to public assistance authorities as arbitrary and capricious, given the goals of public assistance laws. E.g., Nolan v. De Baca, 603 F.2d 810 (10th Cir. 1979); Rosen v. Hursh, 464 F.2d 731 (8th Cir. 1972). Significantly, the Court of Appeals in Rosen reversed the lower court's finding that the agency was justified in denying aid to the family because of the lack of information concerning the income of relatives.

Recently, New York State's highest court also ruled that public assistance could not be denied because of a receipient's refusal to accept employment, unless the recipient's failure to report for employment was "willful." Allen v. Blum, 58 N.Y.2d 954, 956 (1983). Clearly applicants who, without any fault of their own, are unable to prove their relatives' eligibility, are not willful. A presumption that denies eligibility due to the acts of others is as arbitrary as that in Allen v. Blum, which denied eligibility due to non-willful acts.

V. DISCRIMINATION AGAINST DISABLED CHILDREN

Amici urge further that 7 U.S.C. Section 2012(i) discriminates against disabled persons who reside

with their parents. The provision grants separate household status to certain family members who are disabled. Whereas disabled persons who reside with their siblings or disabled parents who reside with their children are permitted separate household status, disabled children living with their parents are never permitted to constitute a separate household. This arbitrary classification scheme also violates the equal protection rights accorded to Appellees by the Fifth Amendment.

Furthermore, denying disabled children, young and old, separate household status, is contrary to the intent of Congress when passing the Omnibus Budget Reconciliation Act of 1982, enacting the statutory

amendments at issue. In so doing, Congress could not have intended to force Food Stamp recipients to violate the Social Security Act. By denying separate household status to disabled persons who reside with their parents and sometimes other siblings, however, 7 U.S.C. Section 2012(i) deems Social Security income received by disabled individuals as income that is available to other family members from which to purchase food for the disableds' relations. Implementation of the statute thus deprives disabled children of their Social Security benefits. As a result, Section 2012(i) is inconsistent with the intent and purpose of Title XVI of the Social Security Act, which was intended to provide, at the very

least, a minimal level of subsistence for disabled individuals. It also forces representative payees to violate 42 U.S.C. Section 1383(a)(4), which holds representative payees criminally responsible should they allow a beneficiaries' payments to be used for the benefit of anyone but the beneficiary.

Nor could Congress have intended that its definition of "children" in 7 U.S.C. Section 2012(i) diverge from its common usage in all other laws, for public assistance purposes and otherwise, meaning persons under the age of majority. Nevertheless, the Secretary has defined children living with their parents as any offspring, whether under the age of majority or not. 7

C.F.R. Section 273.1(a)(3).

CONCLUSION

Amici, with Appellees, respectfully urge this Court to remove the terrible dilemma that faces so many impoverished families on the brink of homelessness, hospitalization, and starvation as they are forced to choose between meeting their shelter needs and their health and nutrition needs, because they are prevented from choosing between the needs of family members whom they are responsible to support and the needs of those whom they are not responsible to support. Moving out of the residence of other family members who have graciously taken them in is not an expedient option, due to the shortage of affordable housing.

At the same time they should not be saddled with the disgrace of hunger and malnutrition for their own households and for the family members who have provided them shelter.

To remove this dilemma, amici urge with Appellees that the decision of the District Court, familiar with the uncontroverted facts posing this situation, be affirmed.

Respectfully submitted,

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